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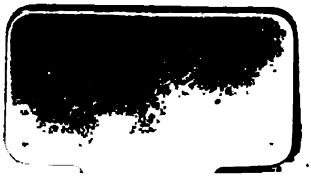

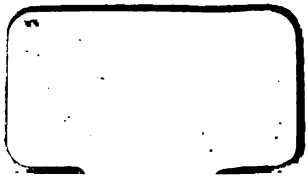

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THE

MUNICIPAL CORPORATIONS ACT,

1883.

THE

Municipal Corporations Act,

1882,

AND

PROVISIONS OF THE BALLOT ACT,

AND

CORRUPT PRACTICES PREVENTION ACTS

APPLICABLE TO MUNICIPAL ELECTIONS,

AND OTHER STATUTES.

WITH NOTES BY

HUGH OWEN,

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"POOR RATE ASSESSMENT AND COLLECTION ACT"
(7TH EDITION), &C.

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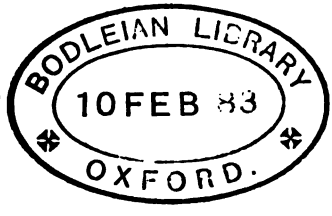
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PREFACE.

THE Municipal Corporations Act, 1882, regarded only as a Consolidation Act, is a measure of considerable importance. It repeals wholly or partially forty-three Acts, and also repeals wholly or in part twenty-six other statutes, so far as they apply to Boroughs under the Municipal Corporations Acts. Besides sweeping away this bewildering mass of legislation the Act gives the provisions which are re-enacted under a convenient classification, and the clauses themselves are relieved of the verbiage which was a characteristic of the earlier Acts. But whilst the Act is a Consolidation Act, it also contains many amendments of the previous law, and it will be the means of removing many doubts and difficulties which have arisen as to the construction of the earlier statutes.

The Bill was brought in by Mr. J. T. Hibbert, M.P. for Oldham, who had charge of the measure in the House of Commons, and Municipal Authorities are in a large measure indebted to him for the passing of the Act.

In this edition of the Statute the sections are very fully annotated, and it is hoped that the notes will be found of practical value to those interested in the execution of the Act. In the Appendix are given several Acts affecting Municipal Authorities, which it will be convenient to have at hand in connexion with the new Statute.

In the preparation of the Index, and in revision for press, assistance has been rendered, for which my acknowledgment is due.

H. O.

1, PUMP COURT, TEMPLE,
November, 1882.

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[45 & 46 Vict., c. 50.]

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ABBREVIATIONS & REFERENCES.

A. & E.—Adolphus & Ellis.
B. & A.—Barnewall & Adolphus.
B. & Al.—Barnewall & Alderson.
B. & E.—Blackburn & Ellis.
B. & S.—Best & Smith.
Beav.—Beavan.
Bing. n.c.—Bingham's new cases.
C. B.—Common Bench.

C. & F.—Clarke & Finnelly.
C. & K.—Carrington & Kirwan.
C. L. R.—Common Law Reports.
D. & L.—Dowling & Lowndes.
De G. M. & G.—De Gex, Macnaghten & Gordon.
Dow.—Dowling.
East.—East.
E. B. & E.—Ellis, Blackburn & Ellis.
E. & B.—Ellis & Blackburn.
E. & E.—Ellis & Ellis.
Exch.—Exchequer.
F. & F.—Foster & Finlason.
G. & D.—Gale & Davison.
H. & C.—Hurlstone & Coltman.
H. L. C.—House of Lords cases (Clark).
H. & N.—Hurlstone & Norman.
H. & P.—Hopwood & Philbrick.
J. P.—Justice of Peace.
Jur.—Jurist.
Kay.—Kay.
Kay & J.—Kay & Johnson.
L. J.—Law Journal.
L. M. & P.—Lowndes, Maxwell & Pollock.
L. R.—Law Reports.
L. T.—Law Times.
M. & G.—Manning & Granger.
M. & W.—Meeson & Welsby.
Mylne & C.—Mylne & Carrington.
N. & P.—Neville & Perry.
New Sess. Cas.—New Sessions Cases.
P. & D.—Perry & Davison.
Q. B.—Queen's Bench.
Sim.—Simon.
Taunt.—Taunton.
T. R.—Term Report.
W. R.—Weekly Reporter.

THE
MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 Vict., c. 50.)

An Act for Consolidating, with Amendments, Enactments relating to Municipal Corporations in England and Wales.

[18*th August*, 1882.]

WHEREAS divers bodies corporate at sundry times have been constituted in the cities, towns, and boroughs of England and Wales, to the intent that the same might for ever be and remain well and quietly governed:

And whereas the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of Municipal Corporations in England and Wales," applies to most of those bodies constituted before the passing of that Act, and to every of those bodies constituted after the passing of that Act; and that Act having been from time to time much altered and added to by other Acts, it is expedient that all the Acts aforesaid be reduced into one Act with some amendments:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PRELIMINARY.

Short Title.

1. This Act may be cited as the Municipal Corporations Act, 1882.

Division of Act into Parts.

2. This Act is divided into Parts, as follows:

PART I.—Preliminary.
PART II.—Constitution and government of borough.
PART III.—Preparations for and procedure at elections.
PART IV.—Corrupt practices and election petitions.
PART V.—Corporate property and liabilities.
PART VI.—Charitable and other trusts and powers.
PART VII.—Borough fund: borough rate: county rate.
PART VIII.—Administration of justice.
PART IX.—Police.
PART X.—Freemen.
PART XI.—Grant of charters.
PART XII.—Legal proceedings.
PART XIII.—General.

Extent.

3. This Act shall not extend to Scotland or Ireland.

Commencement.

4. This Act shall commence and have effect from and immediately after the thirty-first of December one thousand eight hundred and eighty-two.

Repeals.

5. The enactments described in the First Schedule are hereby repealed, subject to the exceptions and qualifications in this Act mentioned.

See sec. 260 (saving clause as to repealed enactments); also secs. 250 and 251 as to savings for existing corporations and local acts.

Application.

6. This Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the

Municipal Corporations Acts are under this Act extended by charter, but to no other place.

As to the date of the commencement of this Act, see sec. 4.

In the Appendix will be found a list of the several cities and towns to which the Municipal Corporations Act, 1835, applied at the date of the passing of this Act. As to the provisions with regard to the grant of new charters, see Part XI., secs. 210-218.

Interpretation and Construction.

7.—(1.) In this Act—

"Borough" means, unless a contrary intention appears, a city or town to which this Act applies:

As to the cities and towns to which this Act applies, see sec. 6.

"Municipal corporation" means the body corporate constituted by the incorporation of the inhabitants of a borough:

"Municipal Corporations Act, 1835," means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September one thousand eight hundred and thirty-five:

"Municipal Corporations Acts" means this Act and any Act to be passed amending this Act:

"Burgess" includes citizen:

"Corporate seal" means the common seal of a municipal corporation:

"Corporate office" means the office of mayor, alderman, councillor, elective auditor, or revising assessor:

"Corporate land" means land belonging to or held in trust for a municipal corporation:

"Municipal election" means an election to a corporate office:

"Parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large:

"Parliamentary election" means an election of a member to serve in Parliament:

"Parish" means any place for which a separate poor rate is or can be made:

"Overseers" means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers:

It will be observed from sub-section 3 of this section that the word "parish" includes a township, and that a township may be constituted a borough, where a parish may be constituted a borough.

By the Local Government Act, 1894, s. 5, sub-s. 1, the chairman of a parish meeting, or if he is not present, then the person presiding at the meeting, has the power of appointing the overseers of the parish. By sub-s. 2, a parish has been divided into wards, and the chairman of the parish meeting has appointed the overseers for the chapelry ward of a parish, the chapelry ward is a "township" within the meaning of the Municipal Corporations Act, 1882, and the chapelry ward may be constituted a borough under the Act. See the case of the parish of Hipperholme-cum-Brighouse, 1894, 2 Q. B. 466; *In the matter of Yorkshire*, 6 A. & E. 545. The same parish meeting, held the offices of churchwarden and overseer to be offices of profit. 1894, 2 Q. B. 466.

By section 6 of the Municipal Corporations Act, 1882, the notice of any meeting, to be lawfully done by the major part of them, at which the election of the mayor is to be made, must be delivered to or left for the several councillors at their usual place of abode, or at his office for the space of [illegible] hours.

"County" does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county:

"Trustees" means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated:

"Person" includes a body of persons corporate or unincorporate:

"Treasury" means the Commissioners of Her Majesty's Treasury:

"The Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"High Court" means Her Majesty's High Court of Justice:

"Justice" means one of Her Majesty's Justices of the Peace:

"Borough civil court" means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a county court:

"Bank of England" means the Governor and Company of the Bank of England:

"Schedule" means schedule to this Act, and "Part" means Part of this Act:

"Writing" includes print, and "written" includes printed.

(2.) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3.) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4.) The schedules shall be read and have effect as if they were part of this Act.

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

CORPORATE NAME.

Name of Municipal Corporation.

8. The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city, the mayor, aldermen, and citizens of the city.

As to the corporation having perpetual succession and a common seal, and the saving of rights, powers, privileges, estates, property, &c., of municipal corporations existing at the commencement of the Act, see sec. 250.

The provision as to the name of the municipal corporation of a city is in accordance with the decision in *Att.-Gen.* v. *Worcester*, 15 L. J., Ch. 398.

BURGESSES.

Qualification of Burgess.

9.—(1.) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess.[1]

(2.) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows:

(*a.*) Is of full age; and

(*b.*) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months, in occupation, joint or several, of any house, warehouse, counting-house, shop, or other building (in this Act referred to as qualifying property) in the borough;[2] and

(*c.*) Has during the whole of those twelve months resided in the borough, or within seven miles thereof;[3] and

(*d.*) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate;[4] and

(*e.*) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding fifth of January.[5]

(3.) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—

(*a.*) Is an alien;[6] or

(*b.*) Has within the twelve months aforesaid received union or parochial relief or other alms;[7] or

(*c.*) Is disentitled under any Act of Parliament.[8]

[1] Every person enrolled in the burgess roll is to be deemed to be "enrolled as a burgess," and every person not enrolled in the burgess roll is to be deemed to be not enrolled as a burgess (sec. 45, (8)).

By sec. 63, it is provided that for "all purposes connected with, and having reference to the right to vote at municipal elections, words in this Act importing the masculine gender include women." As to married women, see note on that section.

[2] In the memorandum, which prefaced the bill as brought in, it was stated that the clause, "as regard the words 'joint or several' is framed with reference to *R.* v. (*Mayor*) *Exeter* L. R., 4 Q. B. 114." In that case D. had carried on the business of a house decorator for twelve years in a house of his own in P. Street, in the borough of E., where he also resided. In June 1866, he went to reside at E., about ten miles from the borough, but retained a furnished bedroom and sitting-room, in his house in P. Street, and these he continued to occupy. He was in the borough each day except Sundays attending to his business. He usually returned to E. in the evening. It was contended that a joint occupation was not sufficient to entitle a person to be placed upon the burgess list, but the court intimated that they had no doubt that a joint occupation was sufficient.

A person is not entitled to be enrolled a citizen of the city of Oxford, or a burgess of the borough of Cambridge, by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of the universities, sec. 257, (3.)

With respect to the term "other building," when used in connection with "house, warehouse, counting-house and shop," it was held with reference to sec. 27 of the Reform Act, 2 Wm. 4, c. 45, in *Powell* v. *Boraston*, 34 L. J., C. P. 73, that a shed of a temporary nature which was erected on a farm by an electioneering agent, the shed being made entirely of wood, having boarded sides and a boarded roof and being supported by four posts let into the ground three feet, was not a "building" within the meaning of the section. Erle, C. J., in that case, after referring to the difficulty of defining clearly what is included in the class described by the words 'other building,' said—"We are of opinion that the intention of the legislature would be defeated, and the words indicating the class of buildings which qualified, would be without any effect if anything which could be called a "building" was held sufficient. It ought to be in some degree adapted to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of a building."

In *Whitmore* v. *Town Clerk of Wenlock*, 5 M. & G. 9; 13 L. J., C. P. 55, a cow-house or stable substantially built of brick or stone, with a tiled roof having a door with a lock and key, and suitable for the purpose for which it was erected and used, was held to be a building within the meaning of sec. 27, of the 2 Wm., 4, c. 45.

A shed standing against a wooden paling, but not fastened to it, the roof being formed of a tarpaulin or tar cloth, supported by six posts put into the ground, and one side being boarded up with boards fastened to the posts by nails, the shed being used for placing in it barrows, shovels and coal baskets, and also for hoops and poles, and the person using it for the latter purpose paying wharfage for it, was held to be a "warehouse" or other building. *Watson* v. *Cotton*, 17 L. J., C. P. 68; 5 C. B. R. 51.

A market gardener erected a wooden structure with boarded sides, and a thatched roof supported by wooden posts let into the ground; there was a door to the structure fastened by a padlock, and it was used for storing potatoes. The structure was held to be a "building." *Powell* v. *Farmer*, 34 L. J., C. P. 71; H. & P. 172; 11 L. T., N.S. 736; 11 Jur., N.S. 162.

The following have since been held to be "buildings" within the section:— A stone building (roofed in) with four walls and a door, used by the tenant of the land for keeping guano and other manures for his land, and worth to him about 5s. a year (*Morrish* v. *Harris*, L. R., 1 C. P. 156; 35 L. J., C. P. 101). A stone building worth about 10s. a year, consisting of three sides and a roof, one side being open, and used by the occupier (a dairyman) for milking his cows in and storing his hay (*Gilham* v. *Harris*). A similar building worth about 5s. a year, which was useful as affording shade and shelter to cattle, (*Berry* v. *Harris* and *Hodges* v. *Harris*). A stone building, roofed, being a linhay, open to the field, with a crib in it, and of the value of about 5s. a year to the occupier of the land. One side of the linhay was prolonged and formed the back of a large tank which contained from sixty to eighty hogsheads of water. The roof of the tank was lower than that of the linhay, and the water flowed from the roof of the linhay into the tank (*Mason* v. *Harris*). Keating, J., with reference to these cases, said, "according to our construction, the building must have some permanence, some utility, and some real value, and by contributing to the beneficial occupation of the land, increase its real annual value to let."

In the case of a factory, four floors in height, which was let off to several persons for cotton spinning, each exclusively occupying and having the key of the door of one room, which was a separate portion of the factory, and in which each had his own spinning machine worked by one steam engine, provided by the landlord, it was held that each of these rooms was a "building." *Wright* v. *Town Clerk of Stockport*, 13 L. J., C. P. 50; 5 M & G. 33.

The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish, (sec. 33, (2)).

Where a person succeeds to qualifying property by descent, marriage, marriage settlement devise or promotion to a benefice or office, the occupancy of the property by a predecessor in title, is for the purpose of qualification equivalent to the occupancy of the successor, (sec. 33, (1)).

The terms "house, warehouse, counting-house, shop or other building" include any part of a house, where that part is separately occupied for the purposes of any trade, business or profession, and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case; and where an occupier is entitled to the sole and exclusive use of any part of a house, that part is not to be deemed occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part, See sec. 31 and note.

[3] With regard to what constitutes "residence" Bayley, J., in *R.* v. *Inhabitants of North Currey* 4 B. & C. 959, said: "I take it that the word 'resides' when there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep." It is not requisite to constitute residence that the residence should be uninterrupted during the whole of the twelve months, provided that there is a power of returning at any time, and there is no abandonment of the intention to return, whenever it may suit

the person's pleasure or convenience to do so. The residence must be *bonâ fide* and not merely colourable. In *R.* v. *the Mayor of Exeter*, L. R., 4 Q. B. 110; 19 L. T., N.S. 397, it appeared that A., after carrying on business and residing at Exeter for many years, went to live in London; he continued his business at Exeter, and he kept offices and rooms there; he was in Exeter about twenty times during the year, staying each time from four to ten days, and on these occasions he always transacted his business, slept, and took some of his meals in his own rooms. It was held that there was sufficient evidence to show that he had a residence there as well as in London, the residence being *bonâ fide*, and amounting to eight weeks out of the fifty-two. In *R.* v. *the Mayor of Exeter*, L. R., 4 Q. B. 114; 19 L. T., N.S. 432, it appeared that A. occupied a house in Exeter jointly with his partner, and carried on his business there. He had the exclusive use of a furnished bedroom and sitting-room. He resided more than seven miles from Exeter. He visited Exeter every day except Sunday to attend to his business, which he always transacted at this house, and he sometimes took his meals there, and "sometimes" slept there if anything happened to detain him later than usual. A *mandamus* was refused on the ground that the evidence was insufficient—his sometimes sleeping on the premises was quite consistent with his being there so seldom as not to constitute a residence at all. Hannen, J. "It is not sufficient to say that D. sometimes slept in Exeter. This expression would be satisfied if he slept there twice."

In *Ford* v. *Drew* (L. R., 5 C. P. D. 59; 49 L. J., C. P. 172; 41 L. T., N.S. 478); during part of the prescribed period of residence, a person who had a bedroom kept for his exclusive use in his father's house in Exeter, was absent in London serving under articles to a solicitor in London, and it was held that being bound by the articles he could not be deemed to have had either the liberty or the intention to return to the room whenever he liked, and therefore had not "resided" within the city for the required time within the meaning of the 2 Wm. 4, c. 45

An officer in the army serving with his regiment, when he obtained leave of absence, which he usually did for three months in the year, used to reside at the house of his mother, within seven miles of the borough, occupying apartments there which were always reserved for his use. He had no other home but his mother's, and was unmarried. Held that there was no constructive residence whilst he was absent with his regiment. He was subject to the will and pleasure of the Queen. He was not *sui juris*, and had voluntarily incapacitated himself from returning to his mother's house at his own pleasure. *Ford* v. *Hart*, L. R., 9 C. P. 273; 43 L. J., C. P. 24; 2 H. & C. 167; 29 L. T., N.S. 685.

G., who had been imprisoned for six months in a gaol more than seven miles from the borough for an assault, without the option of paying a fine, was held not to have "resided" within the borough during that time, although in his absence his business was carried on at his house in the borough by his servant, who occupied the house on his behalf. His furniture remained undisturbed in the house during the term of his imprisonment. During the time he was in prison he was not *sui juris*, and not at liberty to return in consequence of a criminal act of his own. *Powell* v. *Guest*, 34 L. J., C. P. 69; 18 C. B., N.S. 72; 11 L. T., N.S. 599; 10 Jur., N.S. 1238.

In *Ford* v. *Pye*, L. R., 9 C. P. 269; 43 L. J., C. P. 21; 2 H. & C. 167; 29 L. T., N.S. 684, a clergyman who exchanged duties and residence with another clergyman whose house was without the borough, for a period of two months, for the purpose of obtaining recreation and change of scene, was held not to have "resided" for the necessary period. He "had given up the liberty, or at any rate the intention, to return to his house for the two months, and if he had reserved the liberty he had abandoned the intention to return."

In *Durant* v. *Carter*, (L. R., 9 C. P. 261; 43 L. J., C. P. 17; 2 H. & C. 142; 29 L. T., N.S. 681), the incumbent of a benefice was absent from his house from October to June in the qualifying year, having obtained from the Bishop a

licence for non-residence. The curate to serve in his absence was licensed by the Bishop, who, by the licence, required him to reside, and assigned to him the rectory house as a residence. The curate took up his abode there, and by arrangement three rooms in the house were retained by A., and kept locked up, the key being left in the possession of a servant who had been employed by A., but was during his absence employed by the curate. A., it was admitted, could not have returned to the house without providing some other residence for the curate. Held that A. had not resided in the borough for the qualifying period. He had not actually inhabited, and another person, under the authority of the law, and with his consent, had been put into the legal occupation.

If there has been actual residence for the qualifying period, the nature of the residence would appear to be immaterial. It need not be an occupation as owner or tenant. In *Beal* v. *Ford*, L. R., 3 C. P. D. 73; 47 L. J., C. P. 56; 2 H. & C. 374; 37 L. T., N.S. 408, it appeared that A. resided in a house within that borough in July, 1876, and continued so to reside until the 29th March, 1877, when he and his wife and child went to reside with his wife's mother, in a cottage allotted to her by the trustees of a charity, the rules of which prohibited the inmates from allowing any stranger to reside with them. He continued to reside there until the 29th of May (with the exception of one night when he was absent in London on business), when he removed to a house of his own, also within the borough. This residence was held to be sufficient.

A person who succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, is not required to prove his own residence before the succession. Sec. 33 (1).

The distance of seven miles is to be measured in a straight line on a horizontal plane, and may be determined by the map made under the ordnance survey. Sec. 231.

[4] As to the term "qualifying property," see sub-section 2 (*b*) of this section, and section 33 (2).

The Poor Rate Assessment and Collection Act (32 & 33 Vict., c. 41), by sec. 19, enacts that "the overseers in making out the poor rate shall in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate book the name of the occupier of every rateable hereditament, and such occupier *shall be deemed to be duly rated* for every qualification or franchise" (dependent upon rating), ... "provided that any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating in the same manner as if his name had not been so omitted." If an overseer negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, he is, for every such omission or misstatement, liable on summary conviction to a penalty not exceeding £2.

From the decision of the Court of Common Pleas in *Cross* v. *Alsop*, L. R., 6 C. P. 315; 40 L. J., C. P. 53; 23 L. T., N.S. 589, it would appear that the section quoted only applied to the occupiers of rateable hereditaments, in respect of which the owners had entered into agreements with the overseers to pay the rates instead of the occupiers, under sec. 3 of the Poor Rate Assessment and Collection Act, or in respect of which the owners were rated under an order of the vestry, under sec. 4 of that Act. In a later case (*Smith* v. *Overseers of Seghill*, L. R., 10 Q. B. 422; 44 L. J., M. C. 114; 32 L. T., N.S. 859), the Court of Queen's Bench, held that the section applied to every case whether the rate was collected from the owner or occupier, and whether the owner or occupier was liable for the rate. The difficulty occasioned by these conflicting decisions was removed by sec. 14 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict., c. 26), which, after reciting

the provisions of sec. 19 of the Poor Rate Assessment and Collection Act, 1869, enacts that "the recited enactment shall not be deemed to apply exclusively to cases where an agreement has been made under sec. 3 of the same Act, or where an order has been made under sec. 4 of the same Act, but shall be of general application."

With respect to the question as to what constitutes an occupation as a tenant and not as a servant so as to entitle the occupier to have his name entered in the occupiers' column of the rate book, the most recent decision is that in *Smith* (*app.*) v. *Overseers of Seghill* (*resps.*), L. R., 10 Q. B. 422; 44 L. J., M. C. 114; 32 L. T., N.S. 859. In that case S. was a collier, and resided in a house belonging to his employers for which he paid no rent; he was not entitled to any notice to quit, and the occupation of the house would cease at the time when his service ceased. His employers had several houses, and they filled them up with their workmen, in their discretion giving preference to married men. A workman could not go into the house without the owner's concurrence. Some of the workmen were single men, and no house was given to them; these got the same wages as all other workmen, but no allowance for rent. If there were not sufficient houses, an allowance was made to the married men to assist them in paying their rent. If a house was vacant the owners would call upon a married man to go into it. If he did not go, his allowance would cease. It was not absolutely necessary for a workman to live in one of the houses to perform his work. The employers of S. did not compound for their rates under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict., c. 41), but paid upon the full amount, and were rated to the poor rate as occupiers of the houses. It was held that the occupation of S. was not that of a servant but that of a tenant, and that he was entitled to have his name entered in the occupiers' column of the rate book. Cockburn, C.J., said—"The cases of *Hughes* v. *Overseers of Chatham*, 5 M. & G. 54, and *Dobson* v. *Jones*, 5 M. & G. 112, establish the principles by which we must be governed. Where the occupation is necessary for the performance of services, and the occupier is required to reside in the house in order to perform those services, the occupation being strictly ancillary to the performance of the duties which the occupier has to perform, the occupation is that of a servant. 'Required,' means more than the master saying, 'you must reside in one of my houses if you come into my service.' The residence must be ancillary and necessary to the performance of the servant's duties, and unless he is required for that purpose to reside in the house, and not merely as an arbitrary regulation on the part of the master, I do not think he is prevented from occupying as a tenant." See also Parker's case, 5 M. & G. 73, 80; *Fox* v. *Dalby*, L. R., 10 C. P. 285; and other cases cited in *Smith* v. *Overseers of Seghill*.

In *Wright* v. *Town Clerk of Stockport*, 13 L. J., C. P. 50; 5 M. & G. 33, it was held that when the poor rate is in such a form that the name of the occupier appears, the premises for which he is rated, the rateable value thereof, and the amount of the rate, there is a sufficient rating, although several occupiers of the premises are named in the rate, and the rate does not specify what portion of the premises is held by each, nor the rateable value of the portion so held, nor the portion of the rate which is paid by each. The payment of the rate assessed on the premises by any of the parties so jointly rated must enure to the benefit of all, and is virtually a payment by each.

As to the question when a poor rate is to be deemed to be "made," in *Jones* v. *Bubb*, 38 L. J., M. C. 57; 19 L. T., N.S. 483, it was held that a poor rate made on the 18th July, 1867, and allowed on the 4th of September, 1867, was not a rate "*made*" during the twelve calendar months preceding the 31st July, 1868, as it was not signed by the overseers and allowed by the justices within the year. It is now provided by sec. 17 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict., c. 41), that a poor rate shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance (or, in other words, when the rate is not signed on the same

day by all the justices by whom it is allowed), then on the day of the last allowance.

Where a person succeeds to qualifying property by descent, marriage, marriage settlement, &c., the rating of the predecessor in respect thereof, is, for the purpose of qualification, equivalent to the rating of the successor, and rating in the name of the predecessor is, until a new rate is made after the date of succession, equivalent to rating in the name of the successor. Sec. 33 (1).

[5] With regard to the payment of poor rates by occupiers when the rates are deducted from the rent, and by owners when the owners have been rated instead of the occupiers, or have agreed with the occupiers or with the overseers to pay the rate, sec. 7 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict., c. 41) provides as follows :—"Every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as herein provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be *deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which, as regards rating, depends upon the payment of the poor rate.*"

With respect to the deduction by an occupier of the poor rate paid by him from his rent, the Act referred to provides by sec. 1, that "the occupier of any rateable hereditament let to him for a term not exceeding three months, shall be entitled to deduct the amount paid by him in respect of any poor rate assessed upon such hereditament from the rent due or accruing due to the owner." Section 8 of the Act further provides that "where an owner who has undertaken, whether by agreement with the occupier or with the overseers, to pay the poor rates, or has otherwise become liable to pay the same, omits or neglects to pay any such rate, the occupier may pay the same and deduct the amount from the rent due or accruing due to the owner."

When also in a case where the owner of a rateable hereditament has become liable for payment of the poor rates assessed thereon, the goods and chattels of the occupier are distrained for payment of the rates, the occupier is entitled to deduct the amount of rates for which such distraint was made, and the expense of the distraint from the rent due or accruing due to the owner.

As to agreements by owners with the overseers to become liable for the poor rates instead of the occupiers, sec. 3 of the Poor Rate Assessment and Collection Act, 1869, enacts that "in case the rateable value of any hereditament does not exceed £20 if the hereditament is situate in the metropolis, or £13 if situate in any parish wholly or partly within the borough of Liverpool, or £10 if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or £8 if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates, whether the hereditament is occupied or not; the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding 25 per cent. on the amount thereof."

As to the provisions of the Poor Rate Assessment and Collection Act, 1869, with reference to the rating of owners instead of occupiers under an order of vestry, see note to sec. 147.

In order to protect the occupiers from loss of any qualification or franchise depending upon payment of rates in consequence of errors or irregularities on the part of the overseers, with regard to the allowances or deductions made to owners who pay the rates instead of the occupiers, the Assessed Rates Act, 1879 (42 & 43 Vict., c. 10) provides, that, "where by way of commission or abatement, or deduction under the Poor Rate Assessment and Collection Act, 1869, or purporting or assumed to be under that Act, an allowance or deduction

shall actually be made, the same shall for every qualification or franchise depending upon rating or upon payment of rates, be deemed to have been duly made in pursuance of every or any agreement, order, notice or proceeding necessary for the validity thereof under that Act, and to be an allowance or deduction which the overseers were empowered to make; and that no qualification or franchise depending upon rating or upon payment of rates, shall be defeated by reason of such allowance or deduction not having been made in pursuance of an agreement in writing, order in writing, or notice in writing, or by reason of the want or insufficiency of any agreement, order, notice, or proceeding necessary for the validity thereof under the Act, or by reason of any informality or defect in the making thereof."

The rates referred to are rates which have "become payable" up to the last preceding 5th of January. A poor rate which has been duly made by the overseers and allowed by the justices becomes due as soon as it has been published in the manner required by law (17 Geo. 2, c. 3, s. 1; 1 Vict., c. 45, s. 2), and a demand upon the ratepayer, though necessary before proceedings can be taken against him to recover the amount, is not necessary to render the amount due.

The overseers who make the poor rate for a period exceeding three months, may under sec. 15 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict., c. 41), declare that the rate shall be paid by instalments at such times as they shall specify, and, thereupon, each instalment only is enforceable as and when it falls due; and the payment of any such instalment is as respects any qualification or franchise depending upon the payment of the poor rate to be deemed a *payment of such rate in respect of the period to which the instalment applies.* When a poor rate is payable by instalments, the overseers are to set forth in the title of the rate the amount of each instalment, and the date at which each instalment is payable.

With regard to a borough rate payable by instalments, see sec. 33 (3).

In certain cases a rate may become payable by a person although he may not have been assessed to the rate at the time that the rate was made. With regard to persons who become occupiers of tenements which were unoccupied at the time of the making of the rate, or who succeed other occupiers before the rate is wholly discharged, sec. 16 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict., c. 41), enacts as follows:—"If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged, or if the hereditaments being unoccupied at the time of the making of the rate become occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences, as far as the same shall be known to them; and such occupier shall thenceforth *be deemed to have been actually rated* from the date so entered by the overseers, and *shall be liable to pay so much of the rate* as shall be proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, in like manner and with the like remedy of appeal, as if he had been rated when the rate was made." The Poor Law Amendment Act, 1868 (31 & 32 Vict., c. 122), has the following provision to meet the cases of occupiers of new houses or buildings:—"When any person shall occupy any new house or other building in any parish where the poor rate is not made under the provisions of a local Act, which house or building was incomplete, or not fit for occupation (or was not entered as such in the valuation list in force in the parish at the time when the current rate for the time being was made), the overseers may enter such house or building, with the name of the occupier thereof, and the date of the entry in the rate book, and require the occupier to pay such amount as according to their judgment shall be the proper sum, having due regard to the rateable value of such house or building, and the time which shall have elapsed from the making of the current rate to the date of such entry, and the person so charged shall be considered as *actually rated from such date*,

and shall be liable to pay the sum assessed in like manner and subject to the like penalty of distress, and with the like power of appeal, as if he had been assessed for the same when the rate was made.

The non-payment of an illegal rate, although the rate may not have been appealed against, will not disqualify. *R.* v. *Mayor of New Windsor*, 7 Q. B. 908. A rate which does not by its heading or otherwise on the face of it show by what authority and for what purpose it is made, is void. *Eastern Counties Railway* v. *Churchwardens and Overseers of Moulton*, 5 E. & B. 974; 25 L. J., M. C. 49. A poor rate which has not been duly allowed by justices, or has not been duly published is a nullity, and non-payment does not disqualify. *Fox* v. *Davies*, 18 L. J., C. P. 48; 6 C. B. 11. *R.* v. *Dyott*, L. R., 9 Q. B 47.

When a poor rate allowed by two justices was made by the majority of the parish officers, that majority being obtained by the assistant overseer joining in making the rate, such assistant overseer having been appointed by the vestry to perform all the duties incident to the office of overseer, except the collection of rates, it was held that the rate was so far presumably valid that its non-payment disqualified. *Baker* v. *Locke*, 34 L. J., C. P. 49; H & P. 137; 11 L. T., N.S. 567; 11 Jur., N.S. 65.

In a case in which it appeared that the rates had been paid for the occupiers by persons who belonged to a political party in the borough, and, as was believed, for political purposes, the overseers giving receipts for the gross sums to the parties paying and none to the persons in whose names the payments were made, it was held that this payment of the rates by third parties was not sufficient, and that the occupiers were not entitled to be placed on the burgess list. *R.* v. *Mayor of Bridgnorth*, 10 A. & E. 66; 2 P. & D. 317; 3 Jur., 384.

With regard to the term "borough rate," it was held in *R.* v. *Mayor of Lichfield*, 2 Q. B. 693, that the non-payment of a rate levied under a local Act for paving, cleansing, lighting, watching and regulating the streets, &c., did not disqualify.

[6] As to "aliens," see the Naturalization Act, 1870 (33 & 34 Vict., c. 14).

[7] The words "union or parochial relief" are substituted for "parochial relief" in the former Act, as in unions the cost of relief is now a union and not a parochial charge.

All relief given to or on account of the wife, or to or on account of any child or children under the age of 16, not being blind or deaf and dumb, is to be considered as given to the husband of such wife, or to the father of such child or children, and any relief given to or on account of any child or children under the age of 16, of any widow, is to be considered as given to such widow (4 & 5 Wm. 4, c. 76, s. 56).

Every man who marries a woman having a child or children at the time of such marriage, whether the child or children be legitimate or illegitimate, is liable to maintain such child or children as part of his family. and is chargeable with all relief, or the cost price thereof, granted to or on account of such child or children, until such child or children shall respectively attain the age of 16, or until the death of the mother of such child or children (4 & 5 Wm. 4, c. 76, s. 57).

With regard to illegitimate children sec. 71 of the 4 & 5 Wm. IV., c. 76, provides that the mother of a child born a bastard, so long as she shall be unmarried, or a widow, shall be bound to maintain such child as a part of her family until the child attains the age of 16, and that all relief granted to the child while under the age of 16 shall be considered as granted to the mother.

Union or parochial relief granted to the father is not relief to the son. Children are not bound by law to support their parents, except under an order of justices, under the statute of Elizabeth, the justices having to inquire into the respective positions of the parties. *R.* v. *Ireland*, L. R. 3 Q. B. 130; *Trotter* v. *Trevor*, 32 L. J., C. P. 59.

The excusal of a poor rate by justices upon proof of inability through poverty to pay the rate is not parochial relief within the meaning of the Act. *Maskiter* v. *Dunn*, 6 C. B. R. 30; 18 L. J., C. P. 13.

In *R.* v. *Mayor of Lichfield*, 2 Q. B. 693; 2 G. & D. 10; 6 Jur., 624, it was held that in construing the words "parochial relief or other alms," the word "alms" was to be considered as applying only to such alms as are parochial. The receipt of moneys distributed annually from the income of a public charitable institution established by an individual for the use and benefit of the poor householders of the borough not receiving relief from any parish was held, therefore, not to disqualify. The word "alms" was not, however, so construed in a more recent case (*Harrison* v. *Carter*, L. R., 2 C. P. D. 26; 46 L. J., C. P. 57; 35 L. T., N.S. 511) with reference to the disqualification under sec. 36 of the Reform Act, 2 Wm. IV., c. 45, of a person who has received "parochial relief or other alms which by the law of Parliament now disqualify from voting in the election of members to serve in Parliament." In that case it appeared that lands were devised to trustees upon trust to apply the rents, &c., for the putting forth and placing abroad of poor children of the tything of W., the surplus to be distributed "unto the poorest inhabitants of the said tything." The surplus was distributed once a year amongst some 80 of the labouring population according to the discretion of the trustees, and without solicitation, in sums varying from 2*s.* 6*d.* to 12*s.* 6*d.*, according to the necessities of the recipient and the number of his family. C. and P., two agricultural labourers with large families, received a sum of 12*s.* 6*d.* each from the charity, and it was held that this was a receipt of "alms," which disqualified them from being registered as voters.

By the Vaccination Act, 1867 (30 & 31 Vict., c. 84), it is provided that the vaccination or the surgical or medical assistance incident to the vaccination of any person performed or rendered by a public vaccinator, shall not be considered to be parochial relief, alms, or charitable allowance to such person or his parents, and no such person or his parent shall by reason thereof be deprived of any right or privilege, or be subject to any disability or disqualification.

When the school board remit the whole or any part of the school fee in the case of a child on the ground that the parent of the child is unable from poverty to pay the same, "such remission shall not be deemed to be parochial relief given to such parent," (Elementary Education Act, 1870, 33 & 34 Vict., c. 75, s. 17); and when the guardians under sec. 10 of the Elementary Education Act, 1876 (39 & 40 Vict., c. 79), pay the school fee at a public elementary school of a non-pauper child, whose parent is unable by reason of poverty to pay the fee, the parent shall not by reason of such payment "be deprived of any franchise, right, or privilege, or be subject to any disability or disqualification."

A person is not to be disentitled to be enrolled as a burgess by reason only that he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed by order of a justice to a hospital or place for reception of the sick at the cost of any local authority, or that his child has been admitted to and taught in any public or endowed school. (See sec. 33 (4) and note thereon).

* See sec. 80 of this Act as to disqualifications for corrupt practices in municipal elections.

Any person who at the election of any member of a school board, or any officer appointed for the purpose of such election, is guilty of corrupt practices, (corrupt practices including all bribery, treating and undue influence which under any Act relating to a parliamentary election renders such election void), is, on conviction of the offence, disqualified for the term of six years after such election from exercising any franchise at a municipal election (33 & 34 Vict., c. 75, s. 91).

By 33 & 34 Vict., c. 23, s. 2, a person who, after the passing of that Act, is convicted of treason or felony for which he is sentenced to death or penal servitude, or any term of imprisonment with hard labour exceeding twelve

months, is incapable of exercising any municipal franchise until he has suffered the punishment to which he has been sentenced, or such other punishment as by competent authority may be substituted for the same, or shall receive a free pardon.

See also sec. 124, which provides, that if any member of a municipal corporation authorizes or directs any payment or application forbidden by that section, or assents to, or concurs or participates in, any affirmative vote, or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to any instrument by that section declared void, he shall on conviction thereof, be for ever disabled to take, hold, or exercise any office in the same corporation.

COUNCIL; MAYOR, ALDERMEN, AND COUNCILLORS.

Constitution of Council.

10.—(1.) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise.

(2.) The council shall consist of the mayor, aldermen, and councillors.

Qualification of Councillor.

11.—(1.) The councillors shall be fit persons elected by the burgesses.

(2.) A person shall not be qualified to be elected or to be a councillor,[1] unless he—

(*a.*) Is enrolled and entitled to be enrolled as a burgess;[2] or

(*b.*) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made;[3] and

(*c.*) In either of those cases, is seised or possessed of real or personal property or both, to the value or amount, in the case of a borough having four or more wards, of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value of thirty pounds, and in the case of any other borough of fifteen pounds.[4]

(3.) Provided, that every person shall be qualified to be elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor; which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification.[5]

(4.) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

[1] For qualification of burgesses, see sec. 9. As to persons disqualified for being elected and for being councillors, see sec. 12.

When a councillor after election is alleged to have become disqualified and the office is *de facto* full, the council have no authority to determine whether or not the office has been vacated. The title to the office must be determined by *quo warranto* before there can be an election to fill the vacancy.

In the case of a councillor who, during his term of office was omitted from the burgess list, in consequence of his not having paid a certain rate, but who continued to exercise the office, the court on affidavit of these facts refused a mandamus to proceed to a new election, on the ground that the vacancy should be first ascertained by judgment on a *quo warranto* information. *R.* v. *Phippen & Ricketts*, 7 A & E. 966; *R.* v. *Ricketts*, 7 L. J., Q B. 71; see also *R.* v. *Colchester*, 2 T. R. 259; and *R.* v. *Mayor, &c., of Chester*, 25 L. J., Q. B. 61.

If a councillor is declared bankrupt or compounds by deed with his creditors, or makes an arrangement or composition with his creditors under the Bankruptcy Act, 1869, by deed or otherwise, his office is to be declared vacant, as provided by sec 39; but it would appear that except in the case of a person who becomes disqualified under that section, a burgess who is an uncertificated bankrupt is not disqualified for election as a councillor. *R.* v. *Chitty*, 5 A. & E. 609; 1 N. & P. 78.

[2] Under this clause, to qualify a person to be elected, or to be a councillor, he must not only be enrolled in the burgess roll, but be entitled to be so enrolled. This is in accordance with the decision in *Middleton* v. *Simpson*, L. R., 5 C. P. D. 183. The case of a person who was entitled to be enrolled but has not been enrolled, does not come within the provision.

[3] As to the mode of measuring distance, see sec. 231, and as to non-resident list, sec. 49.

See notes to sec. 9 (*c*) as to what constitutes residence.

[4] "Annual value" is the rateable value on which the poor rate is assessed. *Baker* v. *Marsh*, 24 L. J., Q. B. 1; 4 E. & B. 144; 1 Jur. N.S. 44.

As to provisions with reference to qualifications dependent on rating to the poor rate, see note to sec. 9 (2) (*d*).

An increase of the number of wards in a borough does not affect the qualification of the councillors. See sec. 30 (9).

With regard to declarations as to qualification by estate, see sec. 35, and form of declaration in Eighth Schedule. The real and personal estate must be over and above what will satisfy "just debts."

[5] This is an alternative qualification. A person enrolled as a burgess is qualified to elect to the office of councillor. This clause will not, however, apply to a person who is resident beyond seven miles and within fifteen miles of the borough, and is entered in the separate non-resident list under sec. 49. Sub-sections (*b*) and (*c*) apply to this case.

Disqualifications for being Councillor.

12.—(1.) A person shall be disqualified for being elected and for being a councillor, if and while he—

(*a.*) Is an elective auditor or a revising assessor, or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council;[1] or

(*b.*) Is in holy orders, or the regular minister of a dissenting congregation;[2] or

(*c.*) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council:[3]

(2.) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest[4] in—

(*a.*) Any lease, sale, or purchase of land, or any agreement for the same; or

(*b.*) Any agreement for the loan of money, or any security for the payment of money only;[5] or

(*c.*) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or

(*d.*) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or

(*e.*) Any railway company, or any company incorporated by Act of Parliament or Royal charter, or under the Companies Act, 1862.

[1] As to elective auditors, and revising assessors, see secs. 25, 29 and 62. A person is not eligible as an elective auditor, or revising assessor unless he is qualified to be a councillor, and is not a member of the council. The council are to appoint a fit person, "not a member of the council" as town clerk, (sec. 17 (1). Sec. 18 (1), has a similar provision with reference to the treasurer; and secs. 171 & 172, with reference to the offices of coroner and deputy coroner. A person whilst a member of the council cannot therefore be placed in the office of elective auditor, revising assessor, town clerk, treasurer, coroner, or deputy coroner. With regard to the office of clerk to the borough justices, sec. 159 (2) provides that the borough justices shall not appoint or continue as their clerk an alderman or councillor of the borough.

[2] As to the relinquishment of "holy orders," sec. 33 & 34 Vict., c. 91, and Schedule 9, Part II. to this Act.

With regard to the term "regular minister," see *R.* v. *Oldham*, L. R., 4 Q. B. 290. A. was asked in September, 1867, to become the minister of a congregation at P., and had refused. He subsequently preached every Sunday, from the 25th March to 24th June, 1878, and had agreed to do so for the rest of the year. Held that he was not the regular minister of a dissenting congregation.

Blackburn, J.: If a salary had been shown to have been received, or if there had been anything in the nature of a contract, that would have gone to show that he was the regular minister. Mellor, J.: It appears to me that the legislature had an object in view in using the word "regular," and that disqualification was not intended to apply to a person occasionally preaching, but to a person who is appointed to be the minister of a particular congregation, and not merely asked temporarily to hold the office.

[3] The provision in 5 & 6 Wm. 4, c. 76 s. 28, as to disqualification by interest in contracts or employment, was as follows:—"Nor shall any person be qualified to be elected or to be a councillor of any such borough, or an alderman of any such borough . . . . during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of such council."

In *Lewis* v. *Carr*, L. R., 1 Ex. D. 484; 46 L. J., Ex. D. 314; 36 L. T., N.S. 44; C., who was a tallow-chandler, in the year 1874, whilst holding the office of alderman of the borough, had sold goods on several occasions to the corporation on orders drawn up by the waterworks committee of the council and approved by the council, and sent by them to C.'s place of business. Payment was made at intervals by orders signed by three members of the council, and countersigned by the town clerk. In May, 1875, C. acted on five several occasions as alderman, and it was sought to recover from him five penalties of £50 each for so acting. At the time C. so acted, all the goods that had been supplied by him to the council had been paid for, and there were no outstanding transactions between them. It was held that the disqualification of C. was temporary only, and limited to the time during which his interest in these contracts continued. He was not charged with acting during the continuance of the contract, and he had not incurred any penalty by acting afterwards. Amphlett, B.: If a person is interested in a contract at the time of the election he is not qualified to be elected as councillor or alderman; and if a person after election becomes interested in a contract, he is not qualified to be a councillor or alderman during such time as he shall be so interested in the contract. He is not, during that time, qualified *de jure* to act or be a councillor or alderman, and therefore might be removed by a *quo warranto*.

The cases of *R.* v. *Francis*, *Fletcher* v. *Hudson*, *Woolley* v. *Kay*, and *Nicholson* v. *Fields*, bear on the question as to what is to be regarded as a "contract."

In *R.* v. *Francis*, 18 Q. B. 526; 21 L. J., Q. B. 304; 16 Jur., 1046, it appeared that F., at the request of the mayor and town clerk, in 1843, undertook to collect, arrange, and bind the books, &c., of the corporation. The remuneration was not fixed, but in 1849 F., while still engaged in the undertaking, agreed to complete it for £150 as the amount of his actual disbursements and expenses. The offer was accepted by the town council, and a minute was made of a resolution by them to that effect, but the corporate seal was not affixed to the resolution or any minute of it, and no contract under the corporate seal was entered into between the corporation and F. In July, 1849, he received £50 on account, and in November, 1849, he was re-elected a councillor of the borough. He received no payment after that in July, 1849, and had not proceeded with his undertaking after his election. It was held, however, that there was a contract, and that F. was disqualified.

In *Fletcher* v. *Hudson*, L. R., 7 Q. B. D. 611; 51 L. J., Q. B. D. 48; 46, L. T., N.S. 125; an hotel keeper received in March, 1879, £9 19*s.* 6*d.* from the local board, of which he was a member, to reimburse him for work done by him in 1877 and 1878 for the surveyor of the the board. He did the work, not by any arrangement expressed or implied with the local board, but at the request of the surveyor, because the surveyor was unable to get the work done by anyone else in the time, and delay would have occasioned great expense. It was stated that he made no profit out of the transaction. The last item in the account, which was paid in March, 1879, was dated 16th March, 1878. By the Public Health Act, 1875, 38 & 39 Vict., c. 55, any member of a local board who "in any manner is concerned in any

bargain or contract entered into by such board," shall cease to be such member. It was held that there was ample evidence of a contract with the local board in 1878 for the work which was then done and of the defendant being concerned in the contract.

In *Nicholson* v. *Field*, 7 H. & N. 810; 31 L. J., Ex. 233, F. was a commissioner under a local Act, which provided that a person who after his appointment as a commissioner, should be concerned or participate in any manner in any contract, should thenceforth cease to be a commissioner. It was proved by the minute book of the commissioners, and the production of bills signed by F., that in August, 1859, F. was paid by the commissioners £5 13*s.* 1*d.* for timber supplied by him to the commissioners in 1858 and 1859. In November, 1859, he received a further sum of £2 1*s.*, and in May 1860, £2 19*s.* 10*d.* He also sent to the commissioners an invoice for 4*s.*, for lime supplied on 30th March, 16th May, 17th July, and 17th August, 1860. The course of business was for the surveyor of the commissioners to order the materials, and the production of the invoice with the defendant's signature at the bottom was warrant for payment. It was held that F., by being concerned in a contract had become disqualified, and that the invoice for the 4*s.* for the lime was evidence from which the jury might find that the defendant was concerned or participated in a contract within the meaning of the Act. Pollock C. B.: This case differs from *Woolley* v. *Kay*, 1 H. & N. 307; 25 L. J., Ex. 351, where some members of the court expressed an opinion that a mere casual buying and selling, as, for instance, going into a shop, and buying an article, and paying for it over the counter, would not be a contract or bargain for furnishing, supplying, or selling an article, so as to render the party liable to a penalty if he continued to act as a commissioner. Here there were several invoices, one of them showing a dealing which extended over four months. The amount is trifling, but that is immaterial, for it was intended that every description of dealing by the commissioners should be put an end to so far as legislation could do it, and that the party to a contract should be rendered incapable of exercising the office of commissioner—in other words of dealing with himself. Martin, B.: A case was put of the commissioners buying some trifling article at a shop kept by one commissioner, and paying for it over the counter. It seems to me that this is not a contract within the statute, but I am by no means prepared to say that if articles were to be supplied from time to time on credit, there would not be a contract. The buying a pennyworth of nails may not be a contract, but that is different from supplying lime on credit. Here there was evidence of a continuous dealing and supplying on credit of an article which the commissioners must buy.

As to the nature of the interest in a contract which disqualifies, see *Le Feuvre* v. *Lankester*, 3 E. & B. 530; 23 L. J., Q. B. 254; 18 Jur., 894. In that case it appeared that the town council, as the local board of health, ordered certain works to be done, in the course of which it was necessary to erect some lamps and a considerable quantity of iron railing. The superintendent of the works ordered this iron work at a foundry belonging to an alderman of the borough and his partner (Messrs. Lankester), and they supplied it. The greater part of the work was let to contractors who were to supply the iron work, and it was the contractors who paid Messrs. Lankester for this part of the iron. A few small articles were for extra work not included in the contract, and for these the town council or local board of health paid Messrs. Lankester direct. It did not appear that, at the time the goods were supplied, Messrs. Lankester were aware that any part consisted of extras. It was held that this was not an interest in a contract which disqualified. Coleridge, J.: In the present case, all that is asserted is that the defendant, in the course of his trade, sold certain iron work which was used in carrying out the contract. There is no attempt to show fraud or any previous concert between the defendant and the contractor by which the defendant was to have the benefit of the contractor's custom. This gives the defendant no share or interest in the contract, the existence of which neither affects the price of his goods nor the manner in which he is to be paid for them.

In a case, however, where a Turnpike Act contained a clause prohibiting any trustee from having any share or interest in or being in any manner directly or indirectly concerned in any contract or bargain for making or repairing or in any way relating to the road for which he acts, and from letting out any waggon, horse, &c., for the use of the road, and a trustee of the road let his horse and cart for a certain sum to a contractor for works on the road, to be used in the performance of the works, the defendant was held liable to the penalty. *Towsey* v. *White*, 5 B. & C. 125.

In *West* v. *Andrews*, 5 B. & Al. 328, the proceedings were taken under sec. 6 of the 55 Geo. 3, which rendered liable to a penalty any person in whose hands the managment, control, or direction of the poor was placed who either in his own name, or in the name of any other person, provided, furnished or supplied for his own profit any goods, materials, or provisions for the support and maintenance of the poor of the parish for which he retained his appointment, or was concerned directly or indirectly in supplying the same, or in any contract or contracts relating thereto, and a guardian having sold five live sheep to the person who had the contract for the supply of meat, &c., for the poor, it was held that the case fell both within the words and spirit of the Act.

See also *Pope* v. *Backhouse*, 8 Taunt., 239; *Baker* v. *Waite*, 1 A. & E. 514, and *Davies* v. *Harvey*, 43 L. J., M. C. 121; 30 L. T., N.S. 629, as to penalties on guardians supplying goods and materials, and *Tanfield* v. *Reynolds* 39 J. P. 293, as to disqualification of member of school board by being concerned in a contract or bargain with the school board.

As to other disqualifications, see sec. 79 as to disqualification for corrupt practices in a municipal election.

With regard to disqualifications from "corrupt practices" at parliamentary elections, see Parliamentary Elections Act, 1868 (31 & 32 Vict., c. 125, ss. 43, 45 and 47.) Where by the report upon an election petition it is found that bribery has been committed by or with the knowledge and consent of any candidate at a parliamentary election, such candidate is incapable, during the seven years next after the date of his being found guilty, of holding any municipal office. A person, other than a candidate, found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard is during the seven years, next after the time of his being so found guilty, incapable of holding any "municipal office." If the witnesses or any of them on whose testimony a person has become disqualified are on the prosecution of such person convicted of perjury in respect of their testimony, the court may order that the disqualification shall cease.

Any person who at the election of any member of a school board, or any officer appointed for the purpose of that election, is guilty of corrupt practices (corrupt practices including all bribery, treating and undue influence which under any Act relating to a parliamentary election renders such election void), is, on conviction of the offence, disqualified for the term of six years after such election from holding any municipal office. (33 & 34 Vict., c. 75, s. 91; 36 & 37 Vict., c. 86, s 8).

By the 33 & 34 Vict., c. 23, s. 2, it is provided that if any person holding any office in any corporation, is convicted of treason or felony for which he shall be sentenced to death or penal servitude, or any term of imprisonment with hard labour, or exceeding twelve months, his office shall forthwith become vacant, unless he receives a free pardon within two months after conviction, or before the filling up of the office if given at a later period.

The recorder of a borough is not eligible as a councillor during the tenure of his office, see sec. 163 (6).

For penalty on person acting as councillor after becoming disqualified, see sec. 41. As to avoidance of office by bankruptcy or absence, see sec. 39; and as to validity of acts done notwithstanding disqualification, secs. 42 and also sec. 102, which refers to the case of a candidate, who has been elected to a corporate office, being declared by an election court or the high court not to have been duly elected.

When a councillor is alleged to have become disqualified under this section, and the office is *de facto* full, the title to the office is to be determined by *quo warranto* before there can be an election to fill the vacancy. (See *R.* v. *Pepper and Ricketts*, 7 A. & E. 966, and *R.* v. *Ricketts*, 7 L. J., Q. B. 71, in note (1) to sec. 11).

[4] A member of the council is not, however, to vote or take part in the discussion of any matter before the council or a committee in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest. See sec. 22 (3).

[5] In *Le Feuvre* v. *Lankester*, 3 E. & B. 530; 23 L. J., Q. B. 254; 18 Jur., 894, L. contracted to construct some waterworks or commissioners for supplying the town of S. with water. The contract not having been fully carried out he gave it up by deed to the commissioners, they agreeing to pay him a certain balance if they abandoned the works, or completed them and obtained a specified quantity of water. The deed contained releases on each side, and covenants by L. not to molest the commissioners, that he had not injured the title, and for further assurance. The town council, as the local board, were afterwards constituted the commissioners. The works remained incomplete, but not abandoned, while L. was alderman, and also while he was mayor. It was held that this contract came within the exceptions as a "security for the payment of money only."

Term of Office and Rotation of Councillors.

13.—(1.) The term of office of a councillor shall be three years.

(2.) On the ordinary day of election of councillors in every year one-third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election.

(3.) The third to go out shall be the councillors who have been longest in office without re-election.

The mayor and aldermen during their respective offices continue to be members of the council, notwithstanding the provision in this section as to councillors going out of office at the end of three years. (Sec. 38).

As to "the ordinary day of election of councillors," see sec. 52.

In the case of a new borough the years, days and times for the retirement of the first councillors may be fixed by the charter. (Sec. 212).

A councillor going out of office is re-eligible unless disqualified to hold the office. (Sec. 37).

As to the tenure of office by a person elected to fill a casual vacancy, see sec. 40.

For provisions as to the proceedings in the election of councillors, see secs. 50-59; and as to the obligation of a person elected councillor to accept office and make and subscribe declaration or pay fine, see sec. 34.

Number, Term of Office, and Rotation of Aldermen.

14.—(1.) The aldermen shall be fit persons elected by the council.

(2.) The number of aldermen shall be one-third of the number of councillors.

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4.) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor.

(5.) The term of office of an alderman shall be six years.

(6.) On the ordinary day of election of aldermen in every third year one-half of the whole number of aldermen shall go out of office, and their places shall be filled by election.

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election.

The "council" are the mayor, aldermen, and councillors (sec. 10), but an outgoing alderman, although mayor elect, is not entitled to vote in the election, except as provided in sec. 60 (6).

As to persons qualified to be councillors, see secs. 11 and 12. The recorder cannot be an alderman of the borough (sec. 163 (6)).

For provision as to time and mode of election of aldermen, see sec. 60. As to the obligation of a person elected alderman to accept office, and make and subscribe declaration or pay fine, see sec. 34.

In the case of a new borough, the years, days, and times for the retirement of the first aldermen may be fixed by the charter (sec. 212).

An alderman going out of office is re-eligible unless disqualified to hold the office (sec. 37).

As to the tenure of office by a person elected to fill a casual vacancy, see sec. 40.

Qualification, Term of Office, Salary, Precedence, and Powers of Mayor.

15.—(1.) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such.

(2.) An outgoing alderman is eligible.

(3.) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration.

(4.) He may receive such remuneration as the council think reasonable.

(5.) He shall, subject to the provisions of this Act respecting justices, have precedence in all places in the borough.

(6.) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835, shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by

that Act, or have not been altered or annulled by any subsequent Act.

For provision as to time and mode of election of mayor, see sec. 61.

In the election of mayor an outgoing alderman is entitled to vote.

As to the obligation of the person elected mayor to accept office and make and subscribe declaration, or pay fine, see sec. 34.

A mayor going out of office is re-eligible, unless disqualified to hold the office, see sec. 37.

As to the tenure of office by a person elected to fill a casual vacancy, see sec. 40.

When the mayor is one of the councillors who are to go out of office on the 1st of November, his office of councillor becomes vacant on that day, but the mayor continues a member of the council *ex officio*. *R.* v. *Owens*, 2 E. & E. 86; 28 L. J., Q. B. 316; 33 L. T., N.S. 257. See also *R.* v. *Blizard*, and *R.* v. *White*, referred to in note to sec. 53.

The mayor has not precedence over justices acting in and for the county in which the borough or any part of it is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice. Sec. 155 (2).

As to the precedence contemplated prior to the passing of the 24 & 25 Vict., c. 75, in *ex parte Mayor of Birmingham*, 30 L. J., Q. B. 2; 3 L. T., N.S. 270; 6 Jur., N.S. 1094, it was held that the precedence referred to in the 5 & 6 Wm. 4, c. 76, applied only to the social and not the magisterial precedence of the mayor.

The mayors of Oxford and Cambridge are not entitled under the Act to any precedence over the vice-chancellors of the universities. Sec. 257 (2).

The boroughs named in the schedules to the Municipal Corporations Act, 1835, are shown in the Appendix.

See also sec. 16 as to appointment of deputy mayor.

Power of Mayor to appoint Deputy.

16.—(1.) The mayor may from time to time appoint an alderman or councillor to act as deputy mayor during the illness or absence of the mayor.

(2.) The appointment shall be signified to the council in writing and be recorded in their minutes.

(3.) A deputy mayor may, while acting as such, do all acts which the mayor as such might do, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, unless he is a justice, act as a justice or in any judicial capacity.

No defect in the appointment of a deputy is to invalidate his acts, see sec. 237.

For provisions as to chairman of meetings of the council, see second Schedule, Rule 9.

When the office of mayor is vacant, the notice of the meeting for the election to fill the casual vacancy is to be signed by the town clerk. Sec. 66 (2).

If the mayor is dead, or is absent, or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council are forthwith to choose an alderman to execute those powers and duties in the place of the mayor. (Sec. 67).

OFFICERS OF COUNCIL.

The Town Clerk and Deputy.

17.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the town clerk of the borough.

(2.) The town clerk shall hold office during the pleasure of the council.

(3.) He shall have the charge and custody of, and be responsible for, the charters, deeds, records, and documents of the borough, and they shall be kept as the council direct.

(4.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(5.) In case of the illness or absence of the town clerk, the council may appoint a deputy town clerk, to hold office during their pleasure.

(6.) All things required or authorized by law to be done by or to the town clerk may be done by or to the deputy town clerk.

The office of town clerk being one of public and pecuniary trust, a minor cannot be appointed to the office.

The words in sec. 58 of the 5 & 6 Wm. 4, c. 76, that the town clerk "may be an attorney of one of His Majesty's Superior Courts at Westminster, any law, statute, charter, or usage to the contrary notwithstanding," are not reproduced, "the provision being now considered unnecessary, and the effect of it being saved by sec. 260."

The office of town clerk and treasurer cannot be held by the same person. (See sec. 18.)

The town clerk cannot be appointed auditor or revising assessor. (Secs. 25 and 29.)

The appointment should be made under the corporate seal. The Customs and Inland Revenue Act, 1875 (38 Vict., c. 23), repealed the provision in the Stamp Act, 1870, as to stamp duties on appointments.

The town clerk is to hold office "during the pleasure of the council." In *Hayman* v. *Governors of Rugby School*, 43 L. J., 834, with reference to the provision in the Public Schools Act, 1868, that the head-masters of the schools to which that Act applied should hold office during the pleasure of the governing body, Malins, V. C., said, "It is in my opinion clear that the plaintiff and all the head masters of the schools to which the Act applies hold their offices at the pleasure merely of the new governing body, and are consequently liable to be dismissed without notice, and without any reason being assigned. In *R.* v. *Thomas*, 8 A. & E. 185, with reference to the office of town clerk, the office being held during pleasure, it was held that a resolution passed on the 25th July, rescinding a resolution passed on the 20th July, appointing a person as town clerk, was a sufficient removal from office. In *ex parte Richards*, 47 L. J., Q. B. 499, as to the office of clerk to a local board, which is held during the pleasure of the local board, a *quo warranto* was refused on the ground that if the writ could issue it would be an idle form. It might restore the late officer momentarily, but he might be turned out again. See also *Tealher* v. *Poor Law Commissioners*, 19 L. J., M. C. 70.

As to the term of twenty-one days within which a vacancy is to be filled, see sec. 230.

There was no express authority previously for the appointment by the council of a deputy town clerk. No defect in the appointment of a deputy is to invalidate his acts (sec. 237).

By sec. 43 it is provided that if there is no town clerk, and no deputy town clerk, or the town clerk or deputy town clerk is incapable of acting, all acts by law authorized or required to be done by or with respect to the town clerk may, subject to the provisions of any other act, be done by or with respect to a person appointed in that behalf by the mayor.

The Treasurer.

18.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the treasurer of the borough.

(2.) The treasurer shall hold office during the pleasure of the council.

(3.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(4.) The offices of town clerk and treasurer shall not be held by the same person.

The treasurer cannot be appointed auditor or revising assessor. (Secs. 25, 29.)

The appointment should be made under the corporate seal. See note to sec. 17 as to stamp duty.

As to the term "during the pleasure of the council," see note to sec. 17.

With regard to the twenty-one days within which a vacancy is to be filled, see sec. 230.

If there is no treasurer, or the treasurer is incapable of acting, all acts by law authorized or required to be done by, or with respect to the treasurer, may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor. (Sec. 43.)

Other Borough Officers.

19. The council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed.

Security by and Remuneration of Officers.

20. The council shall require every officer appointed by them to give such security as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable.

The following cases with regard to the security given by treasurers, and the remuneration of town clerks may be referred to :—

The 5 & 6 Wm. 4, c. 76, s. 58, required the treasurer of a borough to be appointed by the council in every year. By the 6 & 7 Vict., c. 89, s. 6, the council of every borough were on the 9th of November, 1843, to appoint a treasurer who was thenceforth to hold his office during the pleasure of the council. The condition of a bond, dated the 3rd October, 1839, after reciting that P. had been appointed treasurer of the borough of D., under the 5 & 6 Wm. 4, c. 76, was that P. should at all times account for, and apply all moneys in his hands as treasurer (whether by virtue of his present or any subsequent appointment to the said office) according to the direction and intent of the said statute, and in every other respect act in conformance with the same, "and all other laws, and regulations now or hereafter to be in force touching the said office of treasurer, or the person or persons performing or liable to perform the duties thereof." It was held that under this bond the sureties were liable for a breach of duty by P. as treasurer under an appointment during pleasure by virtue of the 6 & 7 Vict., c. 89. *Mayor &c., of Clifton Dartmouth Hardness* v. *Silby*, 26 L. J., Q. B. 90; 7 E. & B. 97; 3 Jur., N.S. 434.

See also *Mayor &c., of Berwick-upon-Tweed* v. *Oswald*, 5 H. L. C. 856; 25 L. J., Q. B. 383; 2 Jur., N.S. 743.

In *Jones* v. *Mayor of Carmarthen*, 8 M. & W. 605, it was held that a town clerk, who was not allowed any stated salary by the town council, but received fees and other emoluments incident to the office of town clerk, clerk of assize, and prothonotary, could not maintain an action of debt against the corporation for fees in respect of the performance of the duties imposed upon him by the Reform Act or the Municipal Corporations Act.

A town clerk with whom the arrangement was that he should be paid from the borough fund an annual salary of £400 for the performance of the duties of town clerk, and should not be entitled to any further or other remuneration from the borough fund, except for money actually paid out of pocket, sent in a "bill of costs for carrying into effect the provisions of the Parliamentary Registration Act, 6 Vict., c. 18," with the view to the amount being raised by contributions from the parishes in the borough as expenses under that Act. It was held that the town clerk was only entitled to "expenses incurred," and that expenses incurred simply meant money which he had had to pay, and that he could not charge for his own time or labour. "If by his own reasonable exertions, and the clerk or clerks that he would otherwise employ, he is not able to prepare the list of electors, and is obliged to call in the aid of and pay another person for doing that, that would be an expense incurred by him, and for which he ought to have an allowance." *R.* v. *Governors of the Poor of Hull*, 2 E. & B. 182; 22 L. J., Q. B. 324; 17 Jur., 914; 25 L. T., 197.

A town council resolved that the sum of one hundred guineas be fixed as the salary of the town clerk for his attendance on the business of the council and committees, and that he be paid the usual charges and expenses in defending or bringing actions. The town clerk sent in bills of costs in respect of the revision of the burgess lists, elections of councillors, assessors, and auditors, returns to Secretary of State, &c. The bills having been referred for taxation, the master considered the salary as a remuneration for all business except the bringing and defending of actions, and it was held that he had proceeded on the right principle. (*Thomas* v. *Mayor, &c, of Swansea*, 2 Dowl., N.S. 470; 12 L. J., Ex. 73.)

In *R.* v. *Prest*, 16 Q. B. 32; 20 L. J., Q. B. 17; 15 Jur. 554, the duties of the town clerk were prescribed by a resolution of the town council, and the salary was fixed at £250. The duties were to include acting "as the professional adviser of the mayor and council in the business of the council," and the town clerk was to be paid the usual professional charges for conducting or opposing bills in parliament, conducting actions or suits at law or in equity, and preparing leases, conveyances, or securities. Payment of a borough rate having been resisted in one of the townships in the borough, and the overseers having intimated that they would not pay except upon legal compulsion, the council directed the finance committee to take such proceedings as they might deem

expedient for enforcing payment. The town clerk was directed to prepare a bond of indemnity for the overseers under counsel's advice. The bond was prepared and objected to by the overseers. The town clerk went to London and attended conferences between counsel for the overseers, and for the corporation, with a view to an arrangement. The form of the rate was altered, proceedings were taken on behalf of the council to enforce payment, and the rate was levied. The town clerk delivered to the corporation a bill of costs including charges for instructing and conferring with counsel upon the bond of indemnity and form of rate, correspondence and conference with the solicitor of the overseers as to the rate, expenses and loss of time in proceeding to London for the purpose of conferences, in advising on several occasions with counsel, and in journeys to Wakefield and Manchester for the purpose of conferring with the town clerks and clerks of the peace upon the proper form of rates. The services were performed under the direction of the finance committee. It was held that the charges, so far as they regarded business done in the direct course of settling the dispute, might properly be allowed by the corporation as not covered by the salary given for the performance of the ordinary duties of town clerk. Lord Campbell, C. J.: Suppose that there had been an action; at what point would the town clerk have been entitled to commence his charges? When a *lis mota* began? Everything that was then done with a view to the action or to the preventing of it, would have been within the excepting clause. In the present case if the proceedings threatened had resulted in a *mandamus*, the town clerk would clearly have been entitled to the usual professional charges: if so, he is entitled to them here, for having prevented such litigation by his laudable exertions, made under the sanction of the town council.

Accountability of Officers.

21.—(1.) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act in connexion with his office, showing the amount due from each.

(2.) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3.) If any such officer—

(*a.*) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

(*b.*) After three days notice in writing, signed by the town clerk or by three members of the council, given or left at his usual or last known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document

which he ought so to deliver, or to give satisfaction respecting it to the council or as they direct; a court of summary jurisdiction having jurisdiction where the officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction.

(4.) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause.

MEETINGS AND PROCEEDINGS OF COUNCIL; COMMITTEES.

Quarterly and other Meetings of Council; Appointment of Committees, Minutes, &c.

22.—(1.) The rules in the second schedule shall be observed.[1]

(2.) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit, for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval.[2]

(3.) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest.[3]

(4.) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body.[4]

(5.) A minute of proceedings at a meeting of the council, or of a committee, signed at the same or the next ensuing meeting, by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.[5]

(6.) Until the contrary is proved, every meeting of the council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to

have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

[1] The schedule referred to, it will be observed, contains rules as to the four quarterly meetings of the council, the calling of meetings of the council, the notice to be given of meetings and of the business to be transacted thereat, the mode in which members of the council are to be summoned to attend meetings, the chairman of the meetings and his casting vote, the votes by which acts are to be done and questions decided, and the minutes of the proceedings at meetings. Subject to the provisions in the schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

[2] In the case of a committee upon whom powers had been conferred by a board constituted under the Land Drainage Acts, 1861, 1873, it was held that the powers so conferred should be exercised by the committee acting in concert, and that the committee could not apportion among themselves the duties delegated to them. *Cook* v. *Ward*, L. R., 2 C. P. D. 255; 46 L. J., Q. B. 554.

[3] With reference to this clause, see sec. 12 (2), and notes on sec. 12 (1) (*c*).

A town council passed a resolution purporting to declare that the office of H., as an alderman, was vacant by reason of his having acted, voted, or taken part in the discussion with regard to matters in which certain companies of which the alderman was a shareholder, were interested. The resolution further purported to remove H. from his office of alderman. The town council having received notice from H. of his intention to apply for a *mandamus* to compel them to restore him to office, it was admitted that the motion was invalid, and they rescinded their resolution. A *mandamus* to the corporation to restore H. was applied for, on the ground that he might be liable to proceedings if he continued to act merely upon the rescinding of the resolution. The *mandamus* was refused, as there was no wrong which the *mandamus* would remedy. H. was improperly sentenced to removal by the council; but they had rescinded their resolution and revoked their sentence. The first proceeding was of itself invalid, and if not the rescission would have rendered it of no effect. *R.* v. *Mayor of Ryde*, 28 L. T., N.S. 628.

[4] The acts and proceedings of a person in possession of the office of mayor, alderman, or councillor, and acting therein, are, notwithstanding his disqualification or want of qualification, as valid and effectual as if he had been qualified. See sec. 42 (1). See also sec. 102, which provides that where a candidate who has been elected to a corporate office is, by a certificate of an election court, or a decision of the High Court declared not to have been duly elected, acts done by him in the execution of the office before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

[5] In *R.* v. *Town Clerk of Evesham*, 8 A & E. 271; 3 N. & P. 351; 2 Jur., 819, it was held that the minutes of proceedings of the council should be drawn up at the time of the meeting, and signed at that time. As regards the signing of the minutes it is now sufficient if they are signed at the same or the next ensuing meeting.

The minutes of the proceedings of the council are to be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom (sec. 233). For penalty for obstructing inspection, see sec. 233.

If a person forges the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit signature, knowing it to be false, or counterfeit, he is liable to imprisonment for any term not exceeding two years. (Sec. 235).

BYELAWS.

Power of Council to make Byelaws.

23.—(1.) The council may, from time to time, make such byelaws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.[1]

(2.) Such a byelaw shall not be made unless at least two-thirds of the whole number of the council are present.[2]

(3.) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall.[3]

(4.) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of Her Privy Council, disallows the byelaw or part thereof, the byelaw or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the byelaw shall not come into force, and in that case the byelaw shall not come into force until after the expiration of that enlarged time.

(5.) Any offence against such a byelaw may be prosecuted summarily.

(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835;[4] but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances.

[1] By sec. 247 it is provided that, notwithstanding any byelaw, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.

A byelaw under the 4 & 5 Wm. 4, c. 76, s. 90, provided that if any butcher or dealer in meat, or any fishmonger, poulterer, or other person, shall expose or offer for sale in or upon his shop, stall, &c., or have in his possession, with intent to sell or expose for sale, the flesh of any diseased animal, or any unsound, putrid, or unwholesome meat, fish, poultry, or other victuals or provisions unfit for the food of man, or which would be deleterious to the health of persons who might feed thereon (the unfitness or deleteriousness whereof shall be in the decision of the justices adjudicating on the complaint thereof) the person so offending shall for each offence forfeit the sum of 20*s*. A grocer who exposed for sale on his premises cheese, which the justices held was unfit for food, was convicted under the byelaw. The conviction was affirmed. Blackburn, J. *R.* v. *Stevenson* (3 F. & F. 106) shows that it is an offence at common law, knowingly to send to market for human food meat which is unfit for human food. *Shillito* v. *Thompson*, L. R., 1 Q. B. D. 12; 45 L. J., M. C. 18; 33 L. T., N.S. 506; 24 W. R., 57.

Byelaws in force at the commencement of this Act, continue in force, notwithstanding the passing of this Act. (Sec. 260.)

[2] Byelaws can only be made at a meeting, when two-thirds at least of the whole number of the council are present. Subject to this it is not necessary that two-thirds of the whole number of the council should vote on the question; the question as to the making of the byelaws, will be determined by the majority of such members of the council as are present, and vote. See second schedule, Rule 10.

[3] As to the fixing on the town hall, see sec. 232.

With regard to the computation of the period of forty days, see sec. 230.

As to forging of seal or signature to byelaws, see sec. 235.

[4] Section 187 of the Public Health Act, 1875 (38 & 39 Vict., c. 55), provides as follows:—

"Byelaws made by the council of any borough under the provisions of sec. 90 of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act, relating to byelaws shall apply to the byelaws so made as if they were made under this Act."

The provisions of the Public Health Act as to byelaws, referred to in the section quoted are as follows:—

Authentication and Alteration of Byelaws.

All byelaws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act: Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act. (Sec. 182.)

Power to impose Penalties on Breach of Byelaws.

Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such bye laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty. Nothing in the provisions of any Act incorporated herewith shall authorize the imposition or recovery under any byelaws made in pursuance of such provisions of any greater penalty than the penalties in this section specified. (Sec. 183).

Confirmation of Byelaws.

Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such byelaws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such byelaws relate, one month at least before the making of such application; and

Unless for one month at least before any such application, a copy of the proposed by-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

A byelaw required to be confirmed by the Local Government Board shall not require confirmation, allowance, or approval by any other authority. (Sec. 184).

Byelaws to be Printed, &c.

All byelaws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such byelaws relate, on his application for the same; a copy of any byelaws made by a rural authority shall also be transmitted to the overseers of every parish to which such byelaws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours. (Sec. 185).

Evidence of Byelaws.

24. The production of a written copy of a byelaw made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the byelaw, and, if it is so stated in the copy, of the byelaw having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the byelaw.

If a person tenders in evidence a byelaw with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he is liable to imprisonment with hard labour for any term not exceeding two years.

ACCOUNTS AND AUDIT.

The Borough Auditors.

25.—(1.) There shall be three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the mayor, called mayor's auditor.[1]

(2.) An elective auditor must be qualified to be a councillor, but may not be a member of the council, or the town clerk, or the treasurer.[2]

(3.) The mayor's auditor must be a member of the council.

(4). The term of office of each auditor shall be one year.[3]

(5.) The appointment of the mayor's auditor shall be made on the ordinary day of election of the elective auditors.[4]

(6.) On a casual vacancy in his office an appointment to fill it shall be made within ten days after the occurrence of the vacancy.[5]

[1] The auditor named by the mayor has usually been called the "mayor's auditor," but this officer was not so described in the previous Acts.

[2] An elective auditor to "be qualified to be a councillor" must be qualified in the manner provided by sec. 11; see also sec. 12 as to disqualifications for being councillors.

As to the time and mode of election of elective auditors, see sec. 62.

[3] It has been open to question whether elective auditors were re-eligible at the expiration of the year of office, but sec. 37 now provides that an elective auditor shall be re-eligible unless disqualified to hold the office.

[4] For provisions as to the "ordinary day of election of the elective auditors," see sec. 62 (2).

[5] As to a casual vacancy in the office of elective auditor, and the time for which a person elected to fill the casual vacancy is to hold office, see sec. 40.

With reference to the term "within ten days after the occurrence of the vacancy," see provision in sec. 230 as to computation of time.

Half-yearly Accounts of Treasurer.

26. The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act.

It is desirable that the 29th of September and 25th of March, should be appointed as the dates to which the half-yearly accounts shall be made up. If the half-yearly accounts are made up to other dates, the return to be sent to the Local Government Board of the receipts and expenditure of the corporation must, in accordance with the requirements of sec. 28, (2), be made for the year ending on the 25th of March, unless on the application of the town council the Local Government Board prescribe some other date.

The treasurer's accounts are to be open to the inspection of the council, and a member of the council may make a copy or take an extract therefrom (see sec. 233). For penalty for obstructing the inspection, see sec. 233, (7).

With reference to the audit of the accounts of the town council as an urban sanitary authority, sec. 246 of the Public Health Act, 1875 (39 & 40 Vict., c. 75), provides as follows:—

"Where an urban authority are the council of a borough the accounts of the

receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner, and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts.

"Each of such auditors shall in respect of each audit be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint. Any order of such authority for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under section forty-four of the Act of the first year of Her Majesty, chapter seventy-eight, with respect to orders of the council of a borough for payments out of the borough fund."

Audit and Publication of Treasurer's Accounts.

27.—(1.) The treasurer shall within one month from the date to which he is required to make up his accounts in each half-year, submit them, with the necessary vouchers and papers, to the borough auditors, and they shall audit them.

(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year.

As to the date in each half year, to which the accounts are to be made up, see sec. 26.

The auditors are to "audit" the accounts, but they are not empowered, as is the case with the district auditors, who audit the accounts of local boards, boards of guardians, school boards, and highway boards, to disallow in the accounts charges which they consider illegal, and to surcharge the members of the council who authorized the illegal expenditure.

The abstract of the treasurer's accounts is to be open to the inspection of all the ratepayers of the borough, and copies thereof are to be delivered to a ratepayer on payment of a reasonable price for each copy. As to obstruction of inspection or refusal to give copies, see sec. 233.

Returns to Local Government Board.

28.—(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year.[1]

(2.) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4.) The return shall be sent to the Local Government

Board within one month after the completion of the audit for the second half of each financial year.[2]

(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court.

(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

[1] These returns are furnished to the Local Government Board for statistical purposes, and are used by them in the compilation of their "Returns of Local Taxation" under the Local Taxation Returns Acts, 1860 and 1877.

Prior to the passing of the Local Taxation Returns Act, 1877, there was considerable variation in the dates up to which the returns of local authorities were made; and that Act was passed with the view of securing, as far as practicable, the returns of the several authorities being furnished in respect of the same period—the year ending on the 25th of March.

[2] The treasurer is to submit his accounts to the auditor within one month from the date to which the accounts for the half year are required to be made up.

REVISING ASSESSORS.

Revising Assessors in non-Parliamentary Boroughs.

29.—(1.) In every borough whereof no part of the area is co-extensive with or included in the area of a parliamentary borough, there shall be two revising assessors elected by the burgesses.

(2.) Every person shall be eligible who is qualified to be a councillor and is not a member of the council or the town clerk or treasurer.

(3.) The term of office of each revising assessor shall be one year.

(4.) Every revising assessor shall, as soon as conveniently may be after his election, and from time to time as occasion requires, appoint, by writing signed by him, a person eligible to the office of revising assessor, to be his deputy, to act for him in case of his illness or incapacity to act.

(5.) The appointment shall be signified to the council, in writing signed by the assessor, and be recorded in their minutes.

It will be observed that it is only in the case of a municipal borough, of which no part is co-extensive with or included in a parliamentary borough, that revising assessors are to be elected.

To qualify a person to be revising assessor he must be "qualified to be a councillor," as provided by sec. 11. See also sec. 12 as to disqualifications.

As to time and mode of electing revising assessors, see sec. 62.

A revising assessor, at the expiration of his year of office, is re-eligible, unless he is disqualified to hold the office. (Sec. 37.)

With regard to a casual vacancy in the office of revising assessor, and the time for which a person elected to fill the casual vacancy is to hold office, see sec. 40.

DIVISION OF BOROUGH INTO WARDS, OR ALTERATION OF WARDS.

Proceedings for Division of Borough into Wards or alteration of Wards.

30.—(1.) If two thirds of the council of a borough agree to petition, and the council thereupon petition, the Queen for the division of the borough into wards, or for the alteration of the number and boundaries of its wards, it shall be lawful for Her Majesty from time to time, by Order in Council, to fix the number of wards into which the borough shall be divided; and the borough shall be divided into that number of wards.[1]

(2.) Notice of the petition, and of the time when it pleases Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the London Gazette one month at least before the petition is so considered.

(3.) Where an Order in Council has been so made, the Secretary of State shall appoint a commissioner to prepare a scheme for determining the boundaries of the wards and apportioning the councillors among them.

(4.) In case of division into wards, the commissioner shall apportion all the councillors among the wards.

(5.) In case of alteration of wards, he shall so apportion among the altered wards the councillors for those wards as to provide for their continuing to represent as large a number as possible of their former constituents.

(6.) In either case, each councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.

(7.) In case of division into wards the returning officer at the first election for each ward held after the division shall, notwithstanding anything in this Act, be the mayor or a person appointed by the mayor.

(8.) If by reason of any division or alteration under this section any doubt arises as to which councillor should go out of office, the doubt may be determined by the council.

(9.) The division of a borough into a greater number of wards shall not affect the qualification of aldermen or councillors.

(10.) The number of councillors assigned to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

(11.) The commissioner shall make the scheme in duplicate, and shall deliver one of the duplicates to the town clerk, and shall send the other to the Secretary of State, to be submitted by him to Her Majesty in Council for approval.

(12.) The scheme shall be published in the London Gazette, and shall come into operation at the date of that publication, and thenceforth the boundaries of wards and apportionment of councillors determined and made by the scheme shall be observed and be in force.

(13.) If Her Majesty in Council does not approve the scheme, as originally prepared by the commissioner, it shall nevertheless be published in the London Gazette, and shall be in force for the purposes of any municipal election until Her Majesty in Council, on further information and report from the commissioner, definitively approves a scheme in that behalf.

(14.) The commissioner may administer oaths, and may require any person having the custody of any book containing a poor rate made for a parish to produce the book for his inspection; and every person required by the commissioner to answer any question put to him for the purposes of this section shall answer it.

(15.) The commissioner shall have remuneration as appearing by the Fourth and Fifth Schedules.[2]

[1] Subject to the provisions of this section, the boundaries of boroughs existing at the commencement of this Act, the number, apportionment, and qualification of aldermen and councillors, and the division of boroughs into wards, will remain the same as before the date of the commencement of the Act. (See sec. 250.)

[2] The remuneration to be paid to a "commissioner for division into wards or alteration of wards," is £5 5s. for every day he is employed, over and above his travelling and other expenses. (See Fourth Schedule, p. 228).

SUPPLEMENTAL AND EXCEPTIONAL PROVISIONS.

Occupation of part of House.

31. In and for the purposes of this Act—

(*a.*) The terms house, warehouse, counting house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

(*b*) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

See sec. 9 (2) (*b*) and notes thereon.

Claim by Occupier to be Rated.

32.—(1.) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate.

(2.) If they fail to do so, he shall nevertheless for the purposes of this Act be deemed rated to that rate.

For definition of "qualifying property," see secs. 9 and 33.

In the case of a "rateable hereditament," if the name of the occupier has been omitted from the rate, the occupier is entitled under sec. 19 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict., c. 41), notwithstanding such omission, and that no claim to be rated has been made by him, to every qualification and franchise depending on rating. See note to sec. 9 (*d*). In such cases it would appear to be unnecessary to have recourse to the provisions in this section with regard to claims to be rated.

It is to be observed that under the Poor Rate Assessment and Collection Act, 1869, it is the duty of the overseers in making out the poor rate in the case of every rateable hereditament, to enter the name of the occupier in the occupiers' column of the rate book. An overseer who negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, is for every such omission or misstatement liable on summary conviction to a penalty not exceeding £2.

In the cases of owners who agree with the overseers to pay the poor rate, or who are rated or liable to be rated instead of the occupiers, the overseers can require such owners from time to time to deliver to them a list containing the names of the actual occupiers of the hereditaments which are comprised in the agreement, or for which the owners are so rated or liable to be rated. An owner who wilfully omits to deliver such list when required to do so, or wilfully omits therefrom, or misstates therein the name of any occupier, is liable for every such omission or misstatement to a penalty not exceeding £2. (32 & 33 Vict., c. 41, s. 9).

The following are decisions on questions with reference to claims to be rated for the purpose of the Parliamentary franchise:—*Bishop* v. *Smedley*, 15 L. J., C. P. 73; *Caunter* v. *Adams*, 33 L. J., C. P. 68; *Ainsworth* v. *Creeke*, L. R., 4 C. P. 476; 38 L. J., C. P. 58; and *Medwin* v. *Streeter*, L. R., 4 C. P. 488; 38 L. J., C. P. 180.

Rules as to Qualification of Burgess on Succession, &c.

33.—(1.) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor shall, until a new rate is made after the date of succession, be equivalent to rating in the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.[1]

(2.) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.[1]

(3.) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4.) A person shall not be disentitled to be enrolled as a burgess by reason only[2]—

(*a.*) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority;[3] or

(*b.*) That his child has been admitted to and taught in any public or endowed school.[4]

[1] These provisions are supplemental to those in sec. 9, as to the qualification of burgesses. See notes on that section, p. 6.

[2] These provisions have reference to the disqualification specified in sec. 9 (3) (*b*). See notes on that sub-section.

[3] The Statute which empowers a justice to order the removal of a person to a hospital or place for the reception of the sick is the Public Health Act, 1875, which by sec. 124 provides as follows :—

"Where any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district, any person who is suffering from any dangerous infectious disorder, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family, or is on board any ship or vessel, may, on a certificate signed by a legally qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed, by order of any justice, to such hospital or place at the cost of the local authority ; and any person so suffering, who is lodged in any common lodging-house, may, with the like consent and on a like certificate, be so removed by order of the local authority. An order under this section may be addressed to such constable or officer of the local authority as the justice or local authority making the same may think expedient ; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds."

[4] As to school fees paid for a non-pauper child, see note on page 14.

Obligation to accept Office or pay Fine.

34.—(1.) Every qualified person elected to a corporate office, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within five days after notice of election, or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor, one hundred pounds, as the council by byelaw determine.

(2.) If there is no byelaw determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds.

(3.) The persons exempt under this section are—

(*a*.) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body ; and

(*b*.) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.

(4.) A fine payable under this section shall be recoverable summarily.

Where a byelaw made prior to the passing of the 5 & 6 Wm. 4, c. 76, provided that if any person chosen common councilman should, after due notice, refuse to appear and take upon himself the office, he should for such refusal forfeit the sum of £6 13*s.* 4*d.*, the court, notwithstanding the fine had been paid by a person who had been elected and had refused to act, granted a *mandamus* commanding him to take upon himself the office. The court held that it was an offence at common law to refuse to serve an office when duly elected. The byelaw did not say that the party paying the fine should be exempt from serving the office, or that the fine was to be in lieu of service, and as that was not declared in the byelaw, the court could not say that the payment was to have any such operation (*R.* v. *Bower*, 1 B. & C. 585). This section, it will be observed, provides for the payment of a fine "in lieu" of accepting the office.

The section imposes the obligation on a "qualified person." To support a conviction upon a byelaw for not serving a corporate office there must be some evidence that the person is qualified. The evidence of the town clerk that B. was duly elected an auditor of the borough, that the return of the election was duly signed by the mayor, and that formal notice was given to B. to attend and qualify, and that he had stated to the town clerk that he should not qualify and would pay the fine, was held to be sufficient. In a case in which there was no evidence before the justices that a person elected was qualified, the rule for a *mandamus* to the justices to levy a penalty was discharged. *R.* v. *Richmond and others*, 11 W. R., 65.

"Corporate office" is defined by sec. 7 as meaning the office of mayor, alderman, councillor, elective auditor, or revising assessor.

With regard to the "notice of election," Lord Denman, C. J., in *R.* v. *Preece*, 5 Q. B. 94; 12 L. J., Q. B. 335; 7 Jur. 896, observed:—"Casual information is not sufficient, and before an elected officer can be visited with the heavy penalties imposed for neglecting to accept his office, he must have regular notice of his own election, either by being actually present when it is announced or by being apprised of the fact by some official authority."

As to the computation of the "five days after notice of election," see sec. 230.

With respect to the declaration to be made and subscribed, see sec. 35.

The provision that if there is no byelaw determining fines, the fine in the case of an alderman, councillor, elective auditor, or revising assessor, shall be £25, and in the case of a mayor £50, is new.

As regards the exemptions otherwise than under this section, see sec. 253, by which it is provided that nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay, or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments.

Registrars of births and deaths, and registrars of marriages are freed and exempted from holding any corporate office by 7 Wm. 4, and 1 Vict., c. 22, s. 18; and none of the following persons can be compelled to hold a corporate office:—Persons appointed or employed by commissioners of inland revenue (16 & 17 Vict., c. 59, s. 17); commissioners, officers, clerks, or other persons acting in the management or service of the customs (39 & 40 Vict., c. 36, s. 9); officers of excise and persons employed in collection or management of revenue of excise (7 & 8 Geo. 4, c. 53, s. 11); the Postmaster-General and officers of the Post Office (7 Wm. 4, and 1 Vict., c. 33, s. 12); inspectors under the Factory and Workshop Act (41 & 42 Vict., c. 16, s. 67); medical practitioners registered under Medical Act, 1858 (21 & 22 Vict., c. 90, s. 35); dentists under Dentists' Act, 1878 (41 & 42 Vict., c. 33, s. 30); and men enrolled and officers and non-commissioned officers appointed under Reserve Force Act, 1867 (30 & 31 Vict., c. 110, s. 17).

See also provision in sec. 36 (3) as to no person enabled by law to make an affirmation instead of taking an oath being liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take on himself the duties of the office.

Declaration on Acceptance of Office.

35. A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration as in the Eighth Schedule, act in the office except in administering that declaration.

For definition of "corporate office" see sec. 7.

When the declaration prescribed by this section has been made and subscribed, the office becomes full *de facto*. *R.* v. *Mayor of Winchester*, 7 A. & E. 215; 6 L. J., Q. B. 213.

When the question of the qualification of a member was raised by *quo warranto*, it was necessary that it should clearly appear that the office was full *de facto*; but an election cannot now be questioned by a *quo warranto* when it may be questioned by a petition under sec. 87.

Where a person has been *de facto* elected to a corporate office, and has accepted and acted in the office, the election is not impeachable by *mandamus*. *R.* v. *Mayor, &c. of Chester*, 25 L. J., Q. B. 61; *R.* v. *Mayor, &c. of Welshpool*, 35 L. T., N.S. 598.

As to authority of members of the council to receive declaration, see sec. 239.

Non-acceptance of office by a person elected creates a casual vacancy, see sec. 40 (3).

See also notes on sec. 34.

As to qualification by estate, see sec. 11, 2 (*c*), and notes thereon.

Fine on Resignation, &c.

36.—(1.) A person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof.

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

For definition of corporate office see sec. 7.

As to the fine for non-acceptance of office, see sec. 34.

See sec. 232, with reference to notices to be "fixed on the town hall."

As to the resignation of a person after he has become disqualified under sec. 39, see *Hardwick* v. *Brown*, referred to in the notes on that section.

From *R.* v. *Blizard*, L. R., 2 Q. B. 55, it would appear that if a person elected and admitted to an office discovers that for want of qualification, or for other sufficient reason, he is not entitled to hold the office, and resigns it, this

resignation is sufficient, without other proceedings, to make way for a new election. See also *R.* v. *May*, 20 L. J., Q. B. 268.

No oath is now required to be taken by any person as a condition of accepting any office in a municipal corporation (31 & 32 Vict., c. 72, s. 12). As to affirmations in lieu of oath by Quakers, Moravians, and Separatists, see 3 & 4 Wm. 4, c. 49; 3 & 4 Wm. 4, c. 82; and 1 & 2 Vict., c. 77.

Re-eligibility of Office Holders.

37. A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible.

The offices referred to are those of mayor, alderman, councillor, elective auditor, and revising assessor. (Sec. 7.)

Mayor and Aldermen to continue Members of Council.

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years.

For provision as to councillors going out of office at the end of three years, see sec. 13.

Avoidance of Office by Bankruptcy or Absence.

39.—(1.) If the mayor, or an alderman or councillor—

(*a.*) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise; or

(*b.*) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months:

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2.) In any such event the council shall forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as

regards subsequent elections, shall, in case of bankruptcy, cease on his obtaining his order of discharge, and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge.

(4.) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return.

It will be observed that auditors and assessors are not specified in the section.

In the memorandum which prefaced the Bill when brought in, it was stated that this clause as regards bankruptcy, composition, and arrangement was framed with reference to *Hardwick* v. *Brown*, L. R., 8 C. P. 406; 28 L. T., N.S. 502. In that case it appeared that B., whilst a councillor of the borough, filed a petition for the liquidation of his affairs by arrangement or composition under secs. 25 & 26 of the Bankruptcy Act, 1869. Resolutions were passed under sec. 126 for a composition of 3*s.* 6*d.* in the pound. The confirming resolution was registered on the 23rd of September, 1872. In November, 1872, B. placed his resignation of his office in the hands of the town clerk, and two days afterwards, by advertisement, announced his resignation and offered himself for re-election. At the annual meeting on the 9th of November, the town council did not declare the office of B. void, but accepted his resignation. An election was held, and B. having a majority of votes, was declared elected. It was held that although the statutory avoidance of the office only arose upon the declaration thereof by the council, and due publication of the notice, B. was not capable of resigning his office after the composition with his creditors, and the election which proceeded upon the assumption that there had been a resignation of the office and an acceptance of such resignation by the council, was a void election. Further, as B. had not paid the amount of the composition, and his debts had not been paid in full he was not qualified to be re-elected.

See also *R.* v. *Mayor, &c. of Leeds*, 7 A. & E. 963, 2 Jur., 545, where an election of a councillor in the place of one who had become disqualified by bankruptcy was held to be void, as the council had not previously declared the office void, and signified the same by notice.

The requirements of the section must therefore be strictly complied with in order to render the office vacant before an election for filling a vacancy is proceeded with.

In *Aslatt* v. *Corporation of Southampton*, L. R., 16 C. D. 143; 50 L. J., (Ch.) 31; 43 L. T., N.S. 464, it appeared that A., an alderman, submitted to his creditors a proposition to pay 7*s.* 6*d.* in the pound on his debts, and this composition was accepted by a considerable number by circular and letter. He did not, however, execute any composition deed or take any composition proceedings whatever under the Bankruptcy Act, 1869, but he executed a bill of sale duly registered of his stock in trade and book debts to a stranger as security for the amount which he advanced for the payment of the composition. The mayor having called a meeting for the purpose of declaring A.'s office, as an alderman, void, "he having become disqualified to hold the same by reason of his having compounded and arranged with his creditors," an injunction was granted by the Master of the Rolls restraining the town council from proceeding under their notice, on the ground that A. had not compounded with his creditors by deed, and had not made any arrangement or composition with his creditors under the Bankruptcy Act, 1869.

With regard to notices to be fixed on the town hall, see sec. 232.

As to fine for non-acceptance of office, see sec. 34.
See also *R.* v *Mayor, &c. of Welshpool*, in note to sec. 56.
The qualification of a member of the council, when the disqualification is alleged to have arisen after the election may be questioned on *quo warranto*, as the question is not one which can be raised by an election petition under sec. 87.

Filling of Casual Vacancies.

40.—(1.) On a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

For definition of corporate office, see sec. 7.
As to election of mayor, on ordinary vacancy, see secs. 15 and 61, of alderman, secs. 14 and 60, of councillor, secs. 13, and 50-59, of elective auditors, secs. 25 and 62, of revising assessors, secs. 29 and 62.
It will be observed from sec. 66 that on a casual vacancy the election is to be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses. Where the office vacant is that of mayor, the notice of the meeting for the election is to be signed by the town clerk, and in other cases the day of election is to be fixed by the mayor.

Penalty on unqualified person acting in office.

41.—(1.) If any person acts in a corporate office without having made the declaration by this Act required, or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action.[1]

(2.) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office

on the ground only that he was not entitled to be enrolled therein.[2]

[1] For definition of "corporate office," see sec. 7.

As to the declaration by this Act required, see sec. 35.

An action to recover a fine from a person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and will not lie, unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose. See sec. 224.

The 6 & 7 Wm. 4, c. 104, s. 7, provided that no person enrolled in the burgess roll for the time being of any borough, &c., and who should act as mayor, alderman, &c., should be liable to a penalty for so acting, on the ground that "he was not entitled to be on the *burgess list* of such borough." It will be observed that the burgess roll and not the burgess list is now referred to, and the difficulty which arose as to the construction of the previous enactment is avoided.

[2] If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision is to continue in force until the new burgess roll is made. (Sec. 72 (2)).

Validity of acts done notwithstanding disqualification, &c.

42.—(1.) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.

(2.) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

(3.) A burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

See also the provision in sec 102 that where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court declared not to have been duly elected, acts done by him in execution of the office before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

Duties of Town Clerk, Deputy, and Treasurer, during vacancy or incapacity.

43. If there is no town clerk, and no deputy town clerk or there is no treasurer, or the town clerk, deputy town

clerk, or treasurer (as the case may be) is incapable of acting all acts by law authorized or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor.

PART III.

PREPARATIONS FOR AND PROCEDURE AT ELECTIONS.

PARISH BURGESS LISTS; BURGESS ROLLS; WARD ROLLS.

Preparation and Revision of Parish Burgess Lists.

44.—(1.) Where the whole or part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made, in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878.

(2.) Where no part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses shall be made out and revised, and claims and objections relating thereto may be made, in accordance, as nearly as may be, with the provisions of Part I. of the Third Schedule.

(3.) In either case the lists shall be styled the parish burgess lists.

The designation of the lists as "parish burgess lists" is new.

The Burgess Roll and Ward Rolls.

45.—(1.) When the parish burgess lists have been revised and signed, the revising authority shall deliver them to the town clerk, and a printed copy thereof, examined by him and signed by him, shall be the burgess roll of the borough.[1]

(2.) The burgess roll shall be completed on or before the twentieth of October in each year, and shall come into operation on the first of November in that year, and shall

continue in operation for the twelve months beginning on that day.[2]

(3.) The names in the burgess roll shall be numbered by wards or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to wards or polling districts.[3]

(4.) Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough.

(5.) Where the borough has wards, the burgess roll shall be made in separate rolls, called ward rolls, one for each ward, containing the names of the persons entitled to vote in that ward, and the ward rolls collectively shall constitute the burgess roll.

(6.) A burgess shall not be enrolled in more than one ward roll.[4]

(7.) Where a duplicate of a burgess list is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878, it shall have the same effect as the original, and may be delivered instead thereof.[5]

(8.) Every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

(9.) No stamp duty shall be payable in respect of the enrolment of a burgess.

[1] See sub-section 7, as to duplicate of burgess list made under sec. 31 of the Parliamentary and Municipal Registration Act, 1878, being delivered instead of original.

As to the delivery of a printed copy of the burgess roll on payment of a reasonable price for the copy, see sec. 48 (1).

[2] It will be observed from rule 25 in the Third Schedule, Part I., that the 15th of October is the latest day to which the mayor, in boroughs which are municipal only, can adjourn the court for the revision of the parish burgess lists.

In a borough, parliamentary and municipal, the last day for revising a burgess list is the 12th of October. Parliamentary and Municipal Registration Act, 1878, 41 & 42 Vict., c. 26, s. 18 (2).

In the memorandum which prefaced the Bill as brought in, it was stated that this clause was framed with reference to *Budge* v. *Andrews*, L. R., 3 C. P. D. 510; 47 L. J., C. P. 586; 39 L. T., N.S. 166. In that case which had reference to the validity of a nomination of W., who, on the 23rd of October, 1877, was nominated for election as a councillor, it appeared that the name of W., through an omission of the overseers, was not in the burgess roll published on the 22nd of October, 1876, but he was enrolled in the burgess roll published on the 22nd of October, 1877. It was held that W., being on the burgess roll, published on the 22nd of October 1877, was entitled to be nominated for the election which was to take place on the 1st of November, and that it was not necessary that he should also be on the roll for the preceding year.

[3] As to the division of a borough or ward into polling districts, see sec. 64.

[4] See rule 18 in Third Schedule, Part I, which provides with regard to boroughs which are municipal only, that if the name of any person is entered in the

parish burgess lists in respect of property situate in more than one ward, the court may call upon him to choose, and if he does not choose, may determine in which of those wards he shall be entitled to vote.

With regard to boroughs which are parliamentary and municipal, sec. 28 (14) of the Parliamentary and Municipal Registration Act, 1878, provides as follows:—"Where the name of any person appears to be entered more than once as a parliamentary voter on the lists of voters for the same parliamentary borough, or more than once as a burgess on the burgess lists for the same municipal borough, the revising barrister shall inquire whether such entries relate to the same person, and on proof being made to him that such entries relate to the same person shall retain one of the entries for voting, and place against the other or others a note to the effect that the person is not entitled to vote in respect of the qualification therein contained for the parliamentary borough or for the municipal borough, as the case may be, he being on the list for voting in respect of another qualification:

"Any such person may, by notice in writing delivered to the revising barrister, at the opening of his first revision court, select the entry to be retained for voting, and in making such selection may select one entry to be retained for voting for the parliamentary borough, and another entry to be retained for voting as a burgess for the municipal borough, but if he does not make any selection the entry to be so retained shall be selected by the revising barrister, except in the case of freemen, in which case the entry to be retained by the revising barrister for voting shall be that on the freemen's list:

"If any question on appeal, or otherwise, arise as to the validity of the qualification for which the parliamentary voter or burgess is on the list for voting, recourse may be had for supporting the right of the voter or burgess to be on the parliamentary register or burgess roll for voting to any other qualification of such person appearing on the register or burgess roll:

"Provided always, that in the case of a municipal borough divided into wards, a vote given in or the right to vote in one ward shall not be supported by a qualification appearing on the burgess roll for some other ward."

[s] Section 31 of the Parliamentary and Municipal Registration Act, 1878, is as follows:—"The lists, if made out in divisions under this Act, shall, when revised, be delivered to the town clerk to whom in respect of the area to which the lists relate revised parliamentary lists ought to be delivered. The revising barrister shall as part of the business of the revision, at the request of the town clerk of any municipal borough the whole or part of the area of which is co-extensive with or included in the area of a parliamentary borough, sign and deliver to him a duplicate of the whole or part of any revised list made out in divisions and relating to that municipal borough. Every such duplicate shall be prepared by the town clerk at whose request it is so signed, and shall be kept by him for use for municipal purposes."

Arrangement of Lists and Rolls.

46.—(1.) If and as far as the council so direct, the parish burgess lists, and the burgess roll, and the ward rolls (if any), and the lists of claimants and respondents, or any of those documents, shall be arranged in the same order in which the qualifying properties appear in the rate book for the parish in which they are situate, or otherwise in such order as will cause those lists and rolls to record the qualifying properties in sucessive order in the street or other place in which they are situate.

(2.) Subject to any such direction, and to the provisions of this Act as to polling districts, the arrangement of the lists and rolls shall be alphabetical.

As to polling districts, see sec. 64.

Correction of Burgess Roll.

47.—(1.) Where the parish burgess lists are revised under the Parliamentary and Municipal Registration Act, 1878, the burgess roll is subject to alteration or correction in manner provided by section thirty-five of that Act.[1]

(2.) Where the parish burgess lists are revised under this Act, any person whose claim has been rejected or name expunged at the revision of the lists may apply, within two months after the last sitting of the revision court, to the High Court in the Queen's Bench Division for a *mandamus* to the mayor to insert his name in the burgess roll; and thereupon the court shall inquire into the title of the applicant to be enrolled.[2]

(3.) If the court grants a *mandamus*, the mayor shall insert the name in the burgess roll, and shall add thereto the words "by order of Her Majesty's High Court of Justice," and shall subscribe his name to those words.[3]

[1] Section 35 of the Parliamentary and Municipal Registration Act, 1878, is as follows:—"Where burgess lists are revised under this Act, the provisions of the Parliamentary Registration Acts as to appeal from the decision of the revising barrister shall apply to a decision on the revision of the burgess lists, and the provisions of the said Acts as to the alteration or correction of the register in pursuance of any judgment or order of the court of appeal shall apply to the alteration or correction of the burgess roll made up from the burgess lists as if it were a register of parliamentary voters, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him."

[2] In the memorandum which prefaced the Bill as brought in, it was stated that the word "shall" (after "court") in sub-section 2, was used with reference to *R.* v. *Mayor of Harwich*, 8 A. & E. 919. In that case it was held that when a person whose name had been expunged from the burgess roll of a borough by the mayor on revision applied to the court for a *mandamus*, the court were bound to inquire into the title, and that it was not sufficient to show that the name of the person was inserted by the overseers in the burgess list, and was expunged by the mayor on an objection which, for want of legal notice, ought not to have been heard.

[3] In *R.* v. *Mayor of Lichfield*, 1 Q. B. 453; 10 L. J., Q. B. 171; 9 Jur., 889, an inhabitant of one of the parishes in the borough, qualified to be a burgess, sent to the town clerk, before the annual revision, a claim to be placed on the burgess list. The overseers having omitted to send in any burgess list for the parish, the mayor held that the name could not be placed on any list though the qualification was proved. The burgess roll was therefore made up omitting the name. The court granted a *mandamus* to the mayor to insert the name in the burgess roll.

The name of A. having been struck off the burgess list on objection at the revision, he obtained a rule calling on the mayor to show cause why a *mandamus* should not issue, commanding him to admit him into the office of burgess of the borough. The writ was directed to the mayor alone, and he did not appear, and the court held that the objecting burgess was entitled to show cause in the absence of the mayor. They also expressed an opinion that it would in general be well in cases such as this to give notice of the rule to the objecting burgess as well as to the mayor, *R.* v. *Mayor of Exeter*, L. R., 4 Q. B. 110.

See also *R.* v. *Mayor of New Windsor*, 7 Q. B. 908, 13 L. J., Q. B. 337; *R.* v. *Mayor of Dover*, 11 Q. B. 260; 17 L. J., M. C. 75; 12 Jur., 334; *R.* v. *Mayor of Hartlepool*, 21 L. J., Q. B. 71; 15 Jur., 1138; *R.* v. *Mayor of Eye*, 9 A. & E. 670; and *R.* v. *Mayor of Bridgnorth*, 10 A. & E. 66, as to *mandamus* to insert name in burgess roll.

Printing and sale of Burgess Roll and other Documents.

48.—(1.) The town clerk shall cause the parish burgess lists, the lists of claimants and respondents, and the burgess roll, to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy.[1]

(2.) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878, the proceeds of sale shall go to the borough fund.[2]

[1] Under sec. 17 of the 5 & 6 Wm. IV., c. 76, one shilling was the maximum sum which could be charged by the town clerk for a copy of the list of claimants or list of persons objected to.

[2] The provisions of sec. 30 of the Parliamentary and Municipal Registration Act are as follows:—

Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the expenses properly incurred by the town clerk (including in his expenses the matters mentioned in sec. 31 of the Representation of the People Act, 1867), and the expenses properly incurred by the overseers in carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists, and all moneys received in respect of any of those lists, or in respect of any fine imposed by the revising barrister on the revision of the lists, shall be respectively paid and applied as follows:—

(1.) If the area of the parliamentary borough and the area of the municipal borough are co-extensive, one-half of the expenses shall be defrayed in the manner provided by the Parliamentary Registration Acts as expenses incurred thereunder, and the other half shall be defrayed out of the borough fund, and one-half of the moneys received as aforesaid shall be applied in the manner directed in those Acts, and the other half shall be paid to the borough fund:

(2.) In all other cases the expenses and receipts in respect of the area common to the parliamentary borough and to a municipal borough shall, as to one-half thereof, be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts, and shall as to the other half thereof be defrayed out of and paid to the borough fund of such municipal borough:

And the expenses and receipts in respect of an area exclusively parliamentary shall be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts:

And the expenses and receipts of an area exclusively municipal shall be defrayed out of and paid to the borough fund of the municipal borough comprising such area:

Any expenses and receipts incurred or arising in respect of more than one such area shall be apportioned between the several areas in respect of which they are incurred or arise, in the proportion as nearly as may be in which the same are incurred and arise in respect of the several areas, regard being had to the number of parliamentary voters or burgesses in each area, or any other circumstances occasioning the expenses or giving rise to the receipts:

The revising barrister shall, as part of the business of the revision, determine, if necessary, in respect of what area or areas any expenses or receipts are incurred or arise, and how much thereof is attributable to each area.

The remuneration of the revising barrister shall be paid as heretofore under the Parliamentary Registration Acts: Provided always, that in the case of a municipal borough whose burgess lists are revised under this Act, there shall be paid out of the borough fund to the revising barrister, by way of additional remuneration in respect of his additional work on account of the municipal revision for such municipal borough, a remuneration at the rate mentioned in the third section of the Municipal Corporations Act, 1859.

Separate list of persons qualified to be Councillors but not to be Burgesses.

49.—(1.) The overseers of each parish shall at the same time that they make the parish burgess list make a list of the persons entitled in respect of the occupation of property in that parish to be elected councillors, as being resident within fifteen miles although beyond seven miles from the borough.[1]

(2.) The provisions of this Act as to the parish burgess lists, and claims and objections relating thereto, and the revision of those lists shall, as nearly as circumstances admit, apply to the lists made under this section.[2]

(3.) The town clerk shall arrange the names entered in these lists, when revised, in alphabetical order as a separate list (in this Act called the separate non-resident list), with an appropriate heading, at the end of the burgess roll.

[1] As to the qualification as councillors of persons resident beyond seven miles but within fifteen miles of the borough, see sec. 11 (2) (*b*).

With respect to the mode in which the distance referred to is to be measured, see sec. 231.

As to what constitutes "residence," see notes to sec. 9 (2) (*c*).

[2] For provisions of the Act as to parish burgess lists, claims and objections, and the revision of the lists, see secs. 44, 45, and 46.

ELECTION OF COUNCILLORS.

Borough and Ward Elections.

50.—(1.) Where a borough has no wards, there shall be one election of councillors for the whole borough.

(2.) Where a borough has wards, there shall be a separate election of councillors for each ward.

Although, when a borough is divided into wards, there is to be a separate election of councillors for each ward, any notice required to be given may, as to ward elections, comprise matters necessary for several wards. See sec. 65.

Title to Vote.

51.—(1.) At an election of councillors a person shall be entitled to subscribe a nomination paper, and to demand and receive a voting paper, and to vote, if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, and not otherwise.[1]

(2.) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward.[2]

(3.) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it.

[1] For rules as to nominations, see Third Schedule, Part II., p. 221.
For form of nomination paper, see Form I., in Eighth Schedule, p. 236.

[2] A burgess is not to be enrolled in more than one ward roll. See sec. 45 (6.)
With reference to the provision in the 5 & 6 Wm. 4, c. 76, s. 44, that if any burgess should be rated in respect of distinct premises in two or more wards, he should be entitled to be enrolled and to vote in such one of the said wards as he should select, but not in more than one, it was held in *R.* v. *Tugwell*, L. R. 3 Q. B. 704, that where a burgess appeared on the roll for two wards of a borough (no objection having been made at the revision), and voted in one of the wards, the vote was valid. In *R.* v. *Harrald*, L. R., 8 Q. B. 418; 42 L. J., Q. B. 211; 28 L. T., N S. 767; 21 W. R., 910, a burgess who was on the roll for two wards, at the election of town councillors, voted for H. in one ward, and immediately afterwards voted in the other ward. It was held that the vote for H. was good, and that the fact of his voting afterwards in the other ward could not vitiate his previous vote.

Day of Election.

52. The ordinary day of election of councillors shall be the first of November.

If the 1st of November is a Sunday, or a day appointed for public fast, humiliation or thanksgiving, the day of election will be the next day afterwards not being a Sunday, or a day appointed for public fast, &c., as the case may be. Sec. 230.

As to the case of an election not being held on the appointed day, or becoming void, see sec. 70.

Returning Officer at Election.

53.—(1.) At an election of councillors for a whole borough the returning officer shall be the mayor[1]

(2.) At an election for a ward the returning officer shall be an alderman assigned for that purpose by the Council at the meeting of the ninth of November.[2]

[1] The mayor when returning officer cannot return himself as an elected councillor; if he does so the election is void. *R.* v. *Owens*, 2 E. & E. 86; 28 L. J., Q. B. 316; 33 L. T., 257; 5 Jur., N.S. 764; *R.* v. *Blizard*, L. R., 2 Q. B. 55; 36 L. J., Q. B. 18; 15 L. T., N.S. 242.

See also *R.* v. *White*, L. R. 2 Q. B. 557; 36 L. J., Q. B. 267. In that case which referred to a borough not divided into wards, the mayor on the 25th of October, was nominated as a candidate for re-election as a councillor. On the 29th of October, the council appointed one of the aldermen to execute the duties of the mayor with regard to the election. The alderman performed the duties of returning officer, and the mayor was returned as duly elected. It was held that the mayor was not disqualified from being a candidate for the office, and that when the mayor being *ex officio* returning officer was a candidate, he became incapable of performing the functions of returning officer at the election, and the appointment by the council of a substitute to act in the place of the mayor was valid.

[2] As to the appointment of an alderman to execute the powers and duties with regard to the election when the mayor is dead, or is absent, or otherwise incapable of acting, see sec. 67.

In the case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or if the number of aldermen does not exceed the number of wards, a councillor, not being a councillor for that ward, and not being enrolled in the ward roll for that ward. Sec. 67 (2.)

An election of a person to a corporate office is not to be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was held, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election. Sec. 42 (2).

Notice of Election.

54. Nine days at least before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall, and, in the case of a ward election, in some conspicuous place in the ward.

As to the computation of the time, "nine days at least before the day for the election," see sec. 230.

In *Howes* v. *Turner*, L. R., 1 C. P. D. 670; 45 L. J., C. P. 550; 35 L. T., 58; the town clerk having in the notice directed candidates to deliver their nomination papers on a day which was too late, the election was held to be void.

With reference to notices to be "fixed on town hall," see sec. 232.

As to form of notice of election, see Form H. in the Eighth Schedule, p. 235.

Nomination of Candidates.

55. The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule.

Relation of Nomination to Election.

56.—(1.) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4.) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected.

As to the decision on the validity of the nominations, see Rules 9 and 14 in Third Schedule, Part II., pp. 223, 224.

In *R.* v. *Mayor of Welshpool*, 35 L. T., N.S. 594, J., a town councillor, whose term of office would expire by lapse of time on the 1st of November, 1876, filed a petition for liquidation on the 29th June, 1876, and on the 29th July, 1876, a statutory meeting of his creditors, by special resolution, declared that his affairs should be liquidated by arrangement, and that his discharge should be granted to him on the 29th September, 1876. His affairs were so liquidated and he obtained his certificate of discharge. The town council took no action with regard to declaring the office void, but J. did not in fact act as town councillor after the commencement of the proceedings with his creditors, until after the 1st of November. The offices of three other councillors, besides that of J., became vacant on the 1st of November, by lapse of time, and for the four vacancies there were seven candidates. All the candidates were nominated by the same person and as the nominations were consequently invalid, the mayor as returning officer, declared that the retiring councillors, including J., were re-elected. On a rule for a *mandamus* to the mayor, &c., calling upon them to declare the office which had been held by J. as void, and to proceed to a new election, it was held that as the town council had not, prior to the 1st of November, declared the office of J. to be void, it was still full on that day, and that as J. was a retiring councillor, he was properly declared to be re-elected. Further, if there had been any remedy it would have been by petition under the Municipal Corporations, (Corrupt Practices) Act.

As to a person elected councillor for more than one ward, see sec. 68.

Publication of uncontested Election.

57. If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election.

Mode of conducting poll at contested Election.

58.—(1.) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and, subject to the modifications expressed in Part III. of the Third Schedule, and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.[1]

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.

(3.) The poll shall commence at nine o'clock in the forenoon and close at four o'clock in the afternoon of the same day.

(4.) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock.

(5.) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.

(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorize the appointment of any agents of a candidate at a municipal election ; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election.[2]

[1] The provisions of the Ballot Act, 1872, which are applicable to a municipal election, will be found in the Appendix, p. 247. Secs. 20 and 21 of that Act, it will be observed, are repealed by this Act. (See First Schedule, part I., p. 209. In Part III. of the Third Schedule, p. 225, the principal modifications of the Ballot Act in its application to municipal elections are shown.

[2] This section leaves it open to some question, whether in a municipal election there is any actual authority for the appointment of agents of candidates, but

in the case of *Clementson* v. *Mason*, 10 L. R., C. P. 209; 44 L. J., C. P. 171; 32 L. T., N.S. 325; 23 W. R., 620, such appointments were recognized, Denman J. observed, "though the present is the case of a municipal election, I think that the agents appointed by the candidate are personating agents, having precisely the same duties as those appointed in the case of a parliamentary election."

As to the provisions of the Ballot Act, 1872, with respect to agents of candidates, see sec. 4, and Rules 21, 29, 32, 33, 34, 36, 51, 53, 54, and 55 in the First Schedule to that Act, *post*.

Questions which may be put to Voters.

59.—(1.) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions, or either of them:

(*a.*) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough [*or* ward] as follows [*read the whole entry from the roll*]?

(*b.*) Have you already voted at the present election [*add in case of an election for several wards*, in this or any other ward]?

(2.) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4.) Save as by this Act authorized, no inquiry shall be permitted at an election as to the right of any person to vote.

ELECTION OF ALDERMEN.

Time and mode of Election of Aldermen.

60.—(1.) The ordinary day of election of aldermen shall be the ninth of November, and the election shall be held at the quarterly meeting of the council.[1]

(2.) The election shall be held immediately after the election of the mayor, or, if there is a sheriff, the appointment of the sheriff.[2]

(3.) An outgoing alderman, although mayor elect, shall not vote.[3]

(4.) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies,

by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes.[4]

(5.) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk, to be kept for twelve months.[5]

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

[1] The aldermen are to be fit persons elected by the council, and a person is not qualified to be elected unless he is a councillor, or qualified to be a councillor.

As to the number, term of office, and rotation of aldermen, see sec. 14.

If the ninth of November is a Sunday, or a day appointed for public fast, humiliation, or thanksgiving, the day of election will be the next day afterwards, not being a Sunday or a day appointed for public fast, &c., as the case may be. Sec. 230.

As to the case of an omission to elect on the appointed day, see sec. 70.

Rule 2 in the Second Schedule requires that a quarterly meeting shall be held *at noon* on each ninth of November. See also Rules 5, 6, 7, and 8 as to notice of meetings, &c.

[2] As to the election of mayor preceding that of the aldermen, see *R.* v. *McGowan* and *R.* v. *Dudley*, referred to in note to sec. 61.

[3] The provision that an outgoing alderman shall not vote, is in accordance with the decision in *R.* v. *Maddy*, 11 A. & E. 886.

See exception in sub-section 6 as to casting vote when chairman is an outgoing alderman.

[4] The voting papers used in the election of aldermen at a meeting of the town council, are not subject to stamp duty under the Stamp Act, 1870. *R.* v. *Strachan*, L. R., 7 Q. B. 463; 41 L. J., Q. B. 210; 26 L. T., N.S. 835.

Section 241 provides that a misnomer or inaccurate description of any person or place named in any notice or voting paper required by the Act shall not hinder the full operation of the Act with respect to such person or place, provided the description is such as to be commonly understood.

In *R.* v. *Bradley*, 3 E. & E. 634; 30 L. J., Q. B. 180; 3 L. T., N.S. 853; 7 Jur., N.S. 757, it was held that it is not necessary that in the voting papers in the election of an alderman the christian name of the person voted for should be written at full length; and that if such a contraction is written as is ordinarily used as representing the christian name, it is sufficient. See also *R.* v. *Avery*, 18 Q. B. 576; 21 L. J., Q. B. 153; 17 Jur., 194.

If the initial of the christian name instead of the christian name itself is given, it would appear to be a "misnomer," which is covered by sec. 241. (See *R.* v. *Plenty*, L. R., 4 Q. B. 346; 38 L. J., Q. B. 205; 20 L. T., N.S. 520).

In *R.* v. *Deighton*, 5 Q. B. 896; 13 L. J., Q. B. 241; 8 Jur., 686, it was held that when voting papers in the election of an alderman did not contain an accurate description of the place of abode of the person voted for (the place where he daily transacted his business, instead of his place of abode being given) the votes were bad, although such description was made without fraud or intention to mislead, and was such as would be commonly understood to

apply to the person voted for. See also *R.* v. *Hammond*, 21 L. J., Q. B. 153; 16 Jur., 194, 17 Q. B. 772.

In *R.* v. *Coward*, 16 Q. B. 819; 20 L. J., Q. B. 359; 17 L. T. 71; 15 Jur., 726, it appeared that a candidate in the election of councillors, a few days prior to the election, removed from Gouville Road to Newmarket Road. His place of residence was described in the voting papers as Gouville Place instead of Newmarket Road, the two places being situate in different wards. It was held that this was not "an inaccurate description of a place," which was cured by the provision as to misnomers, &c., as that provision applied only to the inaccurate description of a right place, not to the accurate description of a wrong place.

In the case of a voting paper in the election of councillors which contained the name and surname of the candidate and his place of abode, but no description of the candidate, it was held that the omission of the description of the candidate, although there might be no doubt as to the person for whom the vote was intended to be given, was not covered by the provision as to misnomer and inaccurate descriptions, and rendered the vote bad. *R.* v. *Tugwell*, L. R., 3 Q. B. 704.

R. v. *Gregory*, 1 E. & B. 600; 22 L. J., Q. B. 120; 17 Jur., 272. *R.* v. *Thwaites*, 1 E. & B. 704; 22 L. J., Q. B. 238; 17 Jur., 712; and *R.* v. *Stratley*, 6 E. & B. 363; 25 L. J., Q. B., 257; 2 Jur., N.S. 735, also relate to misnomers or inaccurate descriptions in burgess roll and voting papers.

[5] As to the person who is to be chairman of the meeting, see Rule 9 in Second Schedule.

When at a meeting of the town council a minority of the councillors present delivered voting papers to the mayor for certain persons to be elected aldermen, and the town clerk having advised that the day was not the proper one for the election, the mayor, and a majority of the council declined to proceed with the election, and no election was declared, it was held, that although the day was the one on which the council should have proceeded to an election, the act of the minority was not the act of the town council, and that there had been no election. *R.* v. *Mayor, &c., of Bradford*, 20 L. J., Q. B. 227.

ELECTION OF MAYOR.

Time and Mode of Election of Mayor.

61.—(1.) The ordinary day of election of mayor shall be the ninth of November.[1]

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election.[2]

(3.) An outgoing alderman may vote although the person for whom he votes is an alderman.

(4.) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote.[3]

[1] With reference to the qualification, term of office, salary, &c., of mayor, see sec. 15.

As to the day of election, see notes (1) on sec. 60.

[2] The election of mayor on the 9th November, must precede that of aldermen. A prior election of alderman, whether at the quarterly meeting on that

day or at an earlier meeting on the same day, is void. *R.* v. *McGowan* and *R.* v. *Dudley*, 11 A. & E. 869, 886; 4 Jur., 913.

[8] As to the person who is to preside as chairman, see Rule 9 in the Second Schedule.

ELECTION OF AUDITORS AND ASSESSORS.

Time and Mode of Election of Auditors and Assessors.

62.—(1.) The ordinary day of election of elective auditors shall be the first of March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint.[1]

(2.) The ordinary day of election of revising assessors shall be the first of March.[2]

(3.) If the election of elective auditors and that of revising assessors are held at the same time, then at the poll one voting paper only shall be used by any person voting. The names of the candidates for the respective offices shall be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, shall be varied accordingly; but in the counting of the votes every voting paper shall be deemed to be a separate voting paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.[3]

(4.) An elector shall not vote for more than one person to be elective auditor or revising assessor.

(5.) Elections of elective auditors and of revising assessors shall be held at the town hall or some one other convenient place appointed by the mayor.[4]

(6.) Save as in this section provided, all the provisions of this Act with respect to the nomination and election of councillors for a borough not having wards shall apply to the nomination and election of elective auditors and revising assessors.[5]

[1] As to the election of elective auditors by the burgesses, and the appointment of Mayor's auditor by the Mayor, the persons who may be elected and appointed, the term of office of the auditors, and the filling up of a casual vacancy, see sec. 25.

As to the case of the first of March, or other day appointed with the approval of the Local Government Board for the election of elective auditors falling on a Sunday, &c., see sec. 230. As to omission to elect on the day prescribed, see sec. 70.

The appointment of the Mayor's auditor is to be made on the ordinary day of election of the elective auditors. Sec. 25 (5).

[2] Revising assessors, it will be borne in mind, can only be elected in a borough where no part of the area of the borough is co-extensive with or in-

cluded in the area of a parliamentary borough. As to the persons who are eligible, the term of office of revising assessors, and the appointment of deputies, see sec. 29.

With reference to the first of March falling on a Sunday, &c., see sec. 230; and as to an omission to elect on the day prescribed, sec. 70.

[3] Any notice required to be given in connection with a municipal election, may, as to auditors and assessors, be comprised in one notice, see sec. 65.

For provisions of Ballot Act, 1872, with reference to municipal elections, see Appendix, p. 247, and for form of ballot paper, see p. 237.

[4] The election is not to be held in any church, chapel, or other place of worship, see sec. 69.

[5] See secs 51, 53—59, and Part II. of Third Schedule, p. 221.

SUPPLEMENTAL AND EXCEPTIONAL PROVISIONS.

Right of Women to Vote.

63. For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women.

A single woman, if otherwise qualified is by this section entitled to be enrolled as a burgess. With regard to married woman, see *R.* v. *Harrald*, L. R., 7 Q. B. 361; 41 L. J., Q. B. 173; 26 L. T., N.S. 616. In that case, at the election of town councillors for one of the wards of the borough of Sunderland, H. was returned as elected by a majority of one vote. The majority included the votes of two married women. One of these women, A. T., at the time she was put upon the burgess roll was married, but was living apart from her husband, and was occupying a house and paying rates as a single woman. The other, N. S., was a single woman when placed upon the burgess roll, but had married a few days before the election. Cockburn, C. J.: It is impossible to hold that the vote of A. T., who was a married woman when she was placed on the burgess roll, was a good vote. By the common law a married woman's status was so entirely merged in that of her husband that she was incapable of exercising almost all public functions. It was thought to be a hardship that when women bore their share of the public burthens in respect of the occupation of property, they should not also share the right to the municipal franchise and be represented; and it was thought that spinsters and unmarried women ought to be allowed to exercise these rights. It was accordingly enacted that wherever men were entitled to vote, women, being in the same situation, should thereafter be entitled: but this only referred to women possessed of the necessary qualification in respect of property and the payment of rates. It was not intended to alter the status of married women. It seemed clear that the statute had not married women in its contemplation. Nor can it be supposed that the subsequent statute (the Married Women's Property Act), by which the status of married women with regard to the power to hold property has been recognized and established, has by a side-wind given them political or municipal rights. As regards the case of N. S., the circumstances are different. Although she was a single woman when placed on the burgess roll, she was at the time of the election married. There is in the case of this vote, therefore, sufficient doubt as to the validity of the vote to call for further inquiry, and the rule for a *quo warranto* must be made absolute.

Polling Districts.

64. The council may divide the borough or any ward into polling districts, and thereupon the overseers shall, as

far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts.

As to the numbering of the names in the burgess roll, and the arrangement of the parish burgess lists, the ward rolls, and burgess roll, see sec. 45 (3) and sec. 46.

Notices as to Elections.

65. Any notice required to be given in connection with a municipal election may, as to elective auditors and revising assessors, be comprised in one notice, and may, as to ward elections, comprise matter necessary for several wards.

As to election of auditors and assessors, see sec. 62, and the separate election of councillors for each ward, when a borough has wards, sec. 50 (2).

Time for filling Casual Vacancies.

66.—(1.) On a casual vacancy in a corporate office, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3.) In other cases the day of election shall be fixed by the mayor.

For definition of corporate office, see sec. 7.

With reference to casual vacancies in a corporate office, see also sec. 40; as to the mode of computing the time within which the election is to take place after the notice of the vacancy, see sec. 230; and as to failure to hold election within the appointed time, see sec. 70.

Illness, &c., of Mayor or Returning Officer.

67.—(1.) If the mayor is dead, or is absent or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council shall forthwith choose an alderman to execute those powers and duties in the place of the mayor.

(2.) In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed

the number of wards, a councillor not being a councillor for that ward, and not being enrolled in the ward roll for that ward.

This section applies not merely to incapacities, such as the death or absence of the mayor, but to all incapacities, including that of acting as returning officer by reason of being a candidate. See *R.* v. *White*, referred to in note to sec. 53.

As to the assignment of an alderman to be returning officer at a ward election, see sec. 53 (2.)

Election of Councillor in more than one Ward.

68. If a person is elected councillor in more than one ward, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the town clerk, or in his default the mayor shall, within three days after the time for choice has expired, declare, for which of those wards he shall serve, and the choice or declaration shall be conclusive.

See also sec. 230 as to computation of time.

Elections not in Churches.

69. A municipal election shall not be held in any church, chapel, or other place of public worship.

Omission to hold Election, or Election Void.

70.—(1.) If a municipal election is not held on the appointed day or within the appointed time, it may be held on the day next after that day or the expiration of that time.

(2.) If a municipal election is not held on the appointed day or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a *mandamus* for the election to be held on a day appointed by the court.

(3.) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall, and shall be kept so fixed for at least six days before the day appointed for the election; and in all other respects

the election shall be conducted as directed by this Act respecting ordinary elections.

See provisions in sec. 230 as to alteration of date when day falls on Sunday, &c., and as to computation of time.

As to notices to be fixed on town hall, see sec. 232.

Burgess Roll to be in operation until revision of new Burgess Roll.

71.—(1.) If a parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

(2.) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

For provisions as to parish burgess lists and burgess roll, see secs. 44 and 45.

Non-compliance with Rules.

72. An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act.

The rules in the third schedule relate to the preparation and revision of parish burgess lists in boroughs not parliamentary, and nominations in the election of councillors. The Eighth Schedule includes forms of declaration on accepting office and declaration by recorder or borough justice, forms relating to claims and objections, lists of claimants and of persons objected to, and election and forms as to working men's dwellings, and borough bridges.

Election valid unless questioned within twelve months.

73. Every municipal election not called in question within twelve months after the election, either by election petition or by information in the nature of a *quo warranto*, shall be deemed to have been to all intents a good and valid election.

In *ex parte Birkbeck*, L. R., 9 Q. B. 256; 22 W. R., 229, S. was elected an alderman on 9th November, 1868, being then on and entitled to be on the burgess roll. At the revision in October, 1873, he was struck off the burgess list on the ground that he had not on the last day of July, 1873, occupied a house, &c., during the whole preceding twelve months, and it was ascertained

that though he was still rated for the premises, he had given them up many months before. S. did not act from the time of his disqualification becoming known until January, 1874, when he attended a meeting and voted. A *quo warranto* was then moved for. It was held that he became disqualified when he ceased to occupy (which was considered to be more than twelve months previously), and that the application was too late. See also sec. 225.

In a case in which a rule *nisi* for a *quo warranto* information had been discharged, and it appeared that the party who had made the affidavit as relator was a person in such indigent circumstances as to be incapable of paying the expenses of the information, and was procured to make the information by another who was the real prosecutor, and who had made an affidavit in support of the rule, the court ordered the costs to be paid by the party so promoting the application. *R.* v. *Greene*, 4 Q. B. 646.

Where a defendant had been elected to the office of town councillor by a majority of votes, some of which were personated, and upon a rule being obtained for a *quo warranto*, declined to defend his election and offered to disclaim, the court made the rule absolute, without imposing any terms upon the relator as to costs; the defendant having been a candidate for the office, and having made no previous attempt to resign. *R.* v. *Sidney*, 20 L. J., Q. B. 269.

Offences in relation to Nomination Papers.

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

Offences in relation to Lists and Elections.

75.—(1.) If a mayor or revising assessor neglects or refuses to revise a parish burgess list, or a mayor or alderman neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(2.) If—

(*a.*) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act; or

(*b.*) A town clerk neglects or refuses to receive, print, and publish, a parish burgess list or list of claimants or respondents, as required by this Act; or

(*c.*) An overseer or town clerk refuses to allow any such list to be inspected by a person having a right thereto;

he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action.

(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

As to the duties of overseers with regard to making, signing, and delivering parish burgess lists, see Rule 1 in Third Schedule; and as to the duties of the town clerk with regard to parish burgess lists and lists of claimants and respondents, see Rules 3 and 7. With regard to the inspection of these lists, see Rules 2 and 8.

In *Jeffreys* v. *Higgins*, 1 C. L. R., 352, it was held that an alderman who, as presiding officer in an election of councillors, knowingly recorded the vote of a burgess as having been given for a candidate, although the burgess had not delivered a voting paper or voted in the election, did not "neglect or refuse to conduct or declare the election" within the meaning of sec. 48 (the corresponding section) of the 5 & 6 Wm. 4., c. 76.

As to offences in respect of ballot papers, see sec. 3 of the Ballot Act, 1872, in appendix, and also sec. 11 of that Act with regard to the liability of a returning officer, presiding officer, &c., for wilful misfeasance, or wilful act or omission in contravention of the Ballot Act.

The omission of an overseer to sign the burgess list, although it was not alleged that the omission was wilful or corrupt, was held to render the overseer liable to the penalty. Lord Denman, C. J.: "Any inquiry into the motives or cause of neglect would be inexpedient; it would be leaving too much to the lenity of a jury." Williams, J.: "Where no *vis major* or inability intervenes, omitting to do what ought to be done is neglect." *R.* v. *Burrell*, 12 A. & E. 460; 4 P. & D. 207; 4 Jur., 1109.

An overseer who delivered the burgess lists five days after the prescribed day was held liable to the penalty. *Hunt* v. *Hibbs*, 5 H. & N. 123; 29 L. J., (Ex.) 222; 6 Jur., N.S. 78.

Where a parish under a local Act was divided into nine wards, an overseer being appointed for each, and the nine overseers were by the Act constituted the overseers of the parish, a separate list of burgesses was delivered to the town clerk for each ward, no list being signed by any overseer other than that for the ward to which the list referred, and it was held that the case came within the provision as to neglect to make out and sign a list of burgesses for the parish, and that each of the overseers was liable to a penalty for the offence. *R.* v. *Share*, 3 Q. B. 31; 2 G. & D. 453; 6 Jur. 730.

When the name of an overseer was included as a burgess in the burgess list, and the overseer delivered his list personally at the town clerk's office, and had amended the list with his own hand, in the presence of a clerk in the office, it was contended that this was in effect signing the list. The court held otherwise. *R.* v. *Burrell*, 12 A. & E. 460; 4 P. & D. 207; 4 Jur., 1109.

In *Gregory* v. *Fell*, 6 Jur., 422, an action of debt was brought to recover from an overseer a penalty of £50, for not making out the burgess list, and a like penalty for refusing a perusal thereof to a person having a right to demand the same. It was held that the overseer was liable for one penalty only. The first penalty was because the list did not exist, and there could be no refusal to allow the inspection of what was not in existence.

In *Clarke* v. *Grant*, 8 Exch. 252; 22 L. J., Ex. 67; 17 Jur., 239, the question was raised, whether it was necessary that all the overseers, whether churchwardens or not, should sign the lists. The decision in that case is met by the provision in sec. 238 (1.)

When a person had recovered three penalties of £50 each from overseers for neglect to sign the burgess list, and had received the taxed costs of suit as

between party and party, the treasurer of the borough applied for payment of a moiety of the penalties to be carried to the borough fund. This payment not having been made, an action for money had and received was brought by the corporation. It was held that if expenses beyond the costs between party and party had been incurred, the corporation were entitled to half the penalties less these expenses. In the action, it was sufficient *primâ facie* for the corporation to prove the recovery and receipt of the penalties and taxed costs, and it was for the defendant to prove what extra costs, if any, there had been. *Mayor of Harwich* v. *Gant*, 5 E. & B. 182; Jur., N.S. 708.

Revival of former Law on expiration of Ballot Act.

76.—(1.) If the Ballot Act, 1872, ceases to be in force, so much of this Act as directs that the poll at a contested election of councillors shall be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and as applies provisions of the Ballot Act, 1872, to a poll at a contested election of councillors, shall forthwith cease to be in force, and thereupon the enactments in Part IV. of the Third Schedule shall revive and be in force.

(2.) But this cesser and revivor shall not affect any act done, right acquired, or liability or fine incurred, or the institution or prosecution to its termination of any proceeding in respect of any such right, liability, or fine.

The Ballot Act, 1872 (35 & 36 Vict., c. 33), is by the 45 & 46 Vict., c. 64, continued until the 31st December, 1883.

PART IV.

CORRUPT PRACTICES AND ELECTION PETITIONS.

Corrupt Practices. Definitions.

77. In this Part—

"Bribery," "treating," "undue influence," and "personation," include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections:[1]

"Corrupt practice" means bribery, treating, undue influence, or personation :[2]

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office :[3]

"Canvasser" means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at a municipal election, or to vote or to abstain from voting for a candidate at a municipal election :

"Voter" means a burgess or a person who votes or claims to vote at a municipal election :

"Election court" means a court constituted under this Part for the trial of an election petition :

"Municipal election petition" or "election petition" means a petition under this Part complaining of an undue municipal election :

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868 :

"Prescribed" means prescribed by general rules made under this Part :

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates.

[1] For provisions as to bribery, treating, and undue influence in parliamentary elections, see Appendix, pp. 279-288.

For definition of "municipal election," see sec. 7.

[2] For definition of bribery, treating, and undue influence, see Appendix, pp. 279-282. As to personation, see p. 259.

[3] For definition of "corporate office," see sec. 7.

General Penalties for Corrupt Practices.

78. A person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments as if the corrupt practice had been committed at a parliamentary election.

"Corrupt practice" is defined by sec. 77 as meaning bribery, treating, undue influence or personation.

With reference to "corrupt practices" at parliamentary elections, see Appendix, pp. 279-288.

In a case in which a person in soliciting the vote of a voter in a municipal election had said, in reply to the objection of the voter that he would lose much time by going to vote, that he "would be remunerated for what loss of time might occur," it was held that this was bribery within the statute. *Simpson* v. *Yeend*, L. R., 4 Q. B. 626; 38 L. J., Q. B. 313; 21 L. T., N.S. 56; 17 W. R., 1100.

Where a person was guilty of bribery by giving money to five voters at a municipal election, it was held that in each case there was a separate offence,

and that the person was liable to a penalty in respect of each offence. *Milnes* v. *Bale, Milnes* v. *Lea*, L. R., 10 C. P. 591; 44 L. J., C. P. 336; 33 L. T., N.S. 174; 23 W. R., 660.

In a case where there were three liberal candidates, and it was deemed desirable that only one should go to the poll, a test ballot was taken in order to determine who should stand at the election. The candidate who had the largest number of votes at the test ballot was, at the election, returned as elected. Money and drink were given by his agents to certain voters at the test ballot, but no bargain was expressly or impliedly made as to the votes of these persons at the election; nor did the voters understand or suppose that their votes at the election were bought or engaged, or in any way bargained for. The giving of the money and drink under these circumstances was held to be bribery and treating. *Britt* v. *Robinson*, L. R., 5 C. P. 503; 39 L. J., C. P. 265; 23 L. T., N.S. 188; 18 W. R., 166.

It would appear that this clause has the effect of incorporating the provisions of sec. 23 of the 17 & 18 Vict., c. 102, and renders it an offence to give refreshments to voters at a municipal election. *Hargreaves* v. *Simpson*, L. R., 4 Q. B. D. 403; 48 L. J., Q. B. 607; 41 L. T., N.S. 216.

Disqualifications and Avoidance of Election for Corrupt Practices by Candidates.

79.—(1.) Where it is found by the report of an election court[1] that a corrupt practice[2] has been committed by or with the knowledge and consent of a candidate[2] at a municipal election, that candidate shall be deemed to have been personally guilty of a corrupt practice at the election, and his election, if he has been elected, shall be void;[3] and he shall (whether elected or not) during seven years from the date of the report be subject to the following disqualifications:

He shall be incapable of—

(*a.*) Holding or exercising any corporate office or municipal franchise, or being enrolled or voting as a burgess:

(*b.*) Acting as a justice or holding any judicial office:

(*c.*) Being elected to or sitting or voting in Parliament:

(*d.*) Being registered or voting as a parliamentary voter:[4]

(*e.*) Being employed by a candidate in a parliamentary or municipal election:

(*f.*) Acting as overseer or as guardian of the poor.

(2.) If any person is on indictment or information found guilty of a corrupt practice at a municipal election, or is in any action or proceeding adjudged to pay a penalty or forfeiture for a corrupt practice at a municipal election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction

or judgment to all the disqualifications mentioned in this section.

(3.) If after a person has become disqualified under this Part any witness on whose testimony he has become disqualified is, on his prosecution, convicted of perjury in respect of that testimony, the High Court may, on motion, and on proof that the disqualification was procured by means of that perjury, order that the disqualification shall cease.

[1] For provisions as to "election court" see secs. 92 and 93.

[2] For definition of the terms "corrupt practices" and "candidate," see sec. 77.

[3] In *Re the Launceston Election Petition*, it was held that bribery by a candidate at an election, though it renders his election void if he be found guilty of it on petition, does not incapacitate him for election in the sense that the votes given for him by voters after notice of disqualification will be thrown away, no disqualification in that sense of the term arising until after the candidate has been found guilty of bribery on petition; when, therefore, there were two candidates, one of whom was unseated on petition for corrupt practices and the other candidate claimed the seat on the ground that the votes given to the unseated candidate were given with knowledge of his disqualification and were consequently thrown away, it was held that the petitioner was not entitled to the seat (*Drinkwater* v. *Deakin*, L. R., 9 C. P. 626).

[4] In *Grant* v. *Overseers of Pagham*, L. R., 3 C. P. D. 80; 47 L. J., C. P. 59; 37 L. T., N.S. 404; 26 W. R., 169, it was held, with reference to the 31 & 32 Vict., c. 125, s. 43, that in order to disqualify a person for being registered as a voter by reason of personal bribery, or bribery by an agent with his knowledge and consent, he must be found, by the report of the election judge under sec. 11, sub-sec. 14, to have been so guilty. It is not sufficient that the judge states facts from which personal bribery or other corrupt practice might be inferred.

Disqualifications and Avoidance of Election for Corrupt Practices by Agents, and for Offences against this Part.

80. If it is found by an election court that a candidate has by an agent been guilty of a corrupt practice at a municipal election, or that any offence against this Part has been committed at a municipal election by a candidate, or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall, during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any corporate office in the borough, and if he was elected his election shall be void.

For definition of the terms "candidate," "municipal election," and "corporate office," see secs. 7 and 77.

As to "corrupt practices" and offences against this Part, see secs. 77, 78, 82, and 83.

Avoidance of Election for General Corruption.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

Paid Agents and Canvassers.

82.—(1.) A burgess of a borough shall not be retained or employed for payment or reward by or on behalf of a candidate at a municipal election for that borough or any ward thereof as a canvasser for the purposes of the election.

(2.) If any person is retained or employed in contravention of this prohibition, that person and also the person by whom he is retained or employed shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

(3.) An agent or canvasser retained or employed for payment or reward for any of the purposes of a municipal election shall not vote at the election, and if he votes he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

For definition of the terms "candidate," "canvasser," and "municipal election," see secs. 7 & 77.

Payment for Conveyance of Voters.

83. If a candidate, or an agent for a candidate, pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding five pounds.

Prosecutions for Corrupt Practices.

84.—(1.) The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for bribery, undue influence, or personation at a municipal election, with compensation for trouble and loss of time, shall, unless the court otherwise directs, be allowed, paid, and borne as in cases of felony.

(2.) The clerk of the peace of the borough, or, if there is none, of the county in which the borough is situate, shall, if so directed by an election court, prosecute any person for bribery, undue influence, or personation at the election in respect of which the court acts, or sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this Part at the election.

Striking off Votes.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.

Personation.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.

The 6 & 7 Vict., c. 18, contains the following provisions:—

For the more effectual detection of the personation of voters at elections, be it enacted, That it shall be lawful for any candidate, at any election of a member or members to serve in Parliament, for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf, to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice, in writing, to the returning officer or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed (sec. 85).

That if at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not, in fact, the person in whose name he assumes to vote, or to the like effect; then, and in every such case, it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth, to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: Provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this Act to be put to him at the time of polling, and shall take the oaths, or make the affirmations, authorized and required of him (sec. 86).

That every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: Provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three

hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid; and such justice is hereby authorized and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll, then such person shall forthwith be discharged from custody: Provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged (sec. 87).

That if, on the hearing of the said charge, the said two justices shall be satisfied upon the evidence, on oath, of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person, within the meaning of this Act, and is not, in fact, the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial, as in the case of other misdemeanours (sec. 88).

With reference to these provisions, see also sec. 15 of the Ballot Act, 1872, in Appendix p. 259.

ELECTION PETITIONS.

Power to Question Municipal Election by Petition.

87.—(1.) A municipal election may be questioned by an election petition on the ground—

(*a.*) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or

(*b.*) That the election was avoided by corrupt practices or offences against this Part committed at the election; or

(*c.*) That the person whose election is questioned was at the time of the election disqualified; or

(*d.*) That he was not duly elected by a majority of lawful votes.

(2.) A municipal election shall not be questioned on any of those grounds except by an election petition.

When the mayor of a borough had improperly allowed an objection to a nomination paper, it was held that the court had jurisdiction to entertain a petition questioning the validity of the election. *Budge* v. *Andrews and others* L. R., 3 C. P. D. 510; 47 L. J., C. P. 586; 39 L. T., N.S. 166.

Where a mayor overruled an objection to a nomination with reference to the time when the nomination paper was delivered, it was held that the objection was not one which he was empowered o decide, and that the validity of the

nomination might be questioned on appeal. *Howes and Pierce* v. *Turner and Wright*, L. R., 1 C. P. D. 670; 45 L. J., C. P. D. 550; 35 L. T., N.S. 58.

In *Monks* v. *Jackson*, L. R., 1 C. P. D. 683; 46 L. J., C. P. D. 162; 35 L. T., N.S. 95, it appeared that a nomination paper was delivered to the town clerk by an agent of a candidate, and not by the candidate himself, or his proposer or seconder. Objection to the nomination on this ground was taken before the mayor, but it was disallowed by him. It was held that the nomination was bad, and that notwithstanding the decision of the mayor disallowing the ground of objection, the defect was cognizable by the court.

In *Burgoyne* v. *Collins*, 30 W. R., 923, it appeared that the four petitioners, with others, were nominated in an election of town councillors—there being four vacancies. P., one of the eight assenting burgesses who subscribed the nominations of the petitioners, after their nomination papers had been delivered to the town clerk, signed, as an assenting burgess, the nomination paper of a fifth candidate which was delivered to the town clerk. On an objection that the nominations of the four petitioners were bad on the ground that P. had subscribed five nomination papers, the mayor decided that the nominations of the four petitioners were void. It was held that the mayor ought not to have entertained the objection, or that if he did he should have decided that the nominations of the petitioners were valid, and were not invalidated by the subsequent irregularity in relation to the additional nomination paper.

With regard to votes given for a candidate who is legally disqualified for election, Blackburn, J., in his judgment in *R.* v. *Mayor of Tewkesbury*, L. R., 3 Q. B. 634; 37 L. J., Q. B. 288; 18 L. T., N.S. 851, said: "It was decided in *R.* v. *Hawkins* (10 East 211; 3 Dowl. 124) that if an elector having notice of the disqualification of a candidate, chooses to vote for that candidate, it is the same thing as if he did not vote at all. From the illustrations in the cases, it is plain that if an elector knows as a fact that the candidate for whom he is about to vote is disqualified, and yet persists in voting for him, the elector's vote is as utterly thrown away as if he had voted for a dead person." In *R.* v. *Mayor, &c., of Tewkesbury* (L. R., 3 Q. B. 629; 37 L. J., Q. B. 288; 18 L. T., N.S. 851), it appeared that at an election of town councillors for a borough not divided into wards, there were four vacancies and five candidates. B., one of the four who had a majority of the votes, was the mayor, and as he acted as returning officer, was incapable of being elected. On the day of election, shortly after the opening of the poll, printed copies of a notice by M., another candidate, that the mayor was ineligible, and that votes given for him would be thrown away, were posted on the outside of the Town Hall, where the election was held, on the market place, and in various conspicuous places, and printed copies were carried on boards in the public streets. The notice on the Town Hall was taken down by order of a magistrate shortly after it was put up. Notices were also issued by B., warning voters against being deceived by the notice of M. No verbal notice was given, nor was any written or printed notice of disqualification other than as above stated made visible or shown to or served on the voters tendering their votes for B. at the election. It was held on these facts that the votes given for B. were not thrown away so as to make the election fall on the fifth candidate. See also *R.* v. *Hawkins*, 10 East 211; 3 Dow. 124; *R.* v. *Cocks*, 3 E. & B. 249; 23 L. J., Q. B. 133, and the other cases referred to by Blackburn, J., in *R.* v. *Mayor of Tewkesbury*.

See also *R.* v. *Hirons* (7 A. & E. 960; 2 Jur., 108). In that case it appeared that at an annual election of councillors in one of the wards of a borough divided into two wards, a majority of votes was declared in favour of a candidate who was an assessor for the other ward, and consequently was rendered ineligible by the express words of an Act of Parliament. No notice of the ineligibility of this candidate was given, but the Mayor rejected his name from the list published by him of the persons elected, and inserted the name of a candidate having a minority of votes, who accepted the office. The Court granted a *quo warranto* against the latter candidate.

Presentation of Petition.

88.—(1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition.[1]

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.[2]

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.[3]

[1] An unsuccessful candidate at a municipal election cannot properly be made a respondent to a petition complaining of the election, although he had coalesced for the purposes of the election with two successful candidates so as to be responsible equally with them for any act done by any of the three in furtherance of the common purpose. *Lovering* v. *Dawson and others*, L. R., 10 C. P. 711; 44 L. J., C. P. 321; 32 L. T., N.S. 819.

In a case in which A. and B. were candidates for the office of town councillor, A. obtained a majority of votes over B., and he was declared elected, but being disqualified by reason of his being interested in a contract he refused to serve. B. thereupon claimed to have been elected, and having made the requisite declaration, acted on several occasions. A petition was presented alleging that A. was disqualified and that B. was not elected by a majority. A. and B. thereupon gave notice declaring their intention of not opposing the petition. B., however, refused to resign. The court, on an application that the name of B. might be struck out, refused to interfere on the ground that he was properly made a respondent. *Yates and others* v. *Leach and another*, L. R., 9 C. P. 605; 43 L. J., C. P. 377; 30 L. T., N.S. 790.

Where in a borough divided into wards a candidate for the office of town councillor was misdescribed on the burgess roll, and the mayor decided that he was disqualified, and declared his opponent to be elected, it was held that the mayor was not returning officer. *Harmon* v. *Park*, L. R. 6 (C. A.), C. P. D. 323; 44 L. T., N.S. 82; 50 L. J. (C. P.), 227.

An erroneous decision upon the validity of a nomination paper given *bond*

fide by a mayor, whether he be returning officer or not, is not misconduct, and a complaint of such decision as erroneous is not a complaint of his conduct. The mayor cannot in such a case be made a respondent. *Harmon* v. *Park*, L. R., 6 (C. A.), C. P. D. 323; 44 L. T., N.S. 82; 50 L. J., C. P., 227.

[2] As to the term "prescribed" and rules of procedure, see secs. 77, 100.

[3] After the expiration of the time limited for the presentation of the petition, the court have no power to allow any amendment which would substantially be the introduction of a new charge. The petition as presented alleged that burgesses were employed as canvassers for payment and reward in a certain ward, and it was proposed to add the words, "and other wards." *Maude* v. *Lawley*, L. R., 9 C. P. 165; 43 L. J., C. P. 105; 29 L. T., N.S. 924.

A petition having been filed on the grounds of treating, bribery, and intimidation, it was found, after inspection of the counterfoils and ballot papers, under an order of the County Court Judge, that the presiding officer had omitted to enter on the counterfoils in certain cases the number of the voter appearing on the burgess roll, and that in other cases tendered ballot papers were improperly used as ballot papers. The court allowed the petition to be amended by adding paragraphs alleging the above facts. *Pickering* v. *Startin*, 28 L. T., N.S. 111.

An order having been made by a judge at chambers for the delivery by the petitioners to the respondent of particulars of all persons alleged to have been bribed and treated, by whom, when, and where; of all persons alleged to have been retained and employed as canvassers, by whom, when, and where; and of all persons to whom money was paid or agreed to be paid on account of conveyance of voters to the poll, and by whom, when, and where such moneys were paid or agreed to be paid—the order was allowed by the court, with the addition of the words, "so far as known." *Maude* v. *Lawley*, L. R., 9 C. P. 165; 43 L. J., C. P. 105; 30 L. T., N.S. 168; 22 W. R., 649.

A petitioner having omitted to deliver a list of the votes objected to within the time prescribed by the general rules, he applied to the court for leave to give evidence, *nunc pro tunc*, against the validity of certain votes, and to file a list of objections. It was held that the court had no jurisdiction to grant the application. *Neild and Others and Batty*, L. R., 9 C. P. 104; 43 L. J., C. P. 73; 29 L. T., N.S. 747; 22 W. R., 407.

Security for Costs.

89.—(1.) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a Judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money, or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4.) Within five days after service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

(5.) An objection to a recognisance shall be decided in the prescribed manner.

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

In *Williams* v. *Mayor of Tenby and others*, it was held that these provisions are peremptory, and an appeal against an order of a judge at chambers that a municipal election petition should be taken off the file on the ground that these conditions had not been fulfilled, was dismissed. L. R., 5 C. P. D. 135; 49 L. J., C. P. 325.

As to respondents, see note to sec. 88.

As to the term "prescribed" and rules of procedure, see secs. 77 and 100.

Petition at Issue.

90. On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

Municipal Election List.

91.—(1.) The prescribed officer shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner.

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part the petition

shall be deemed to be a separate petition against each respondent.

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

As to the term "prescribed," see secs. 77 and 100.

Constitution of Election Court.

92.—(1.) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions; and those judges or two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the election petitions at issue, and shall appoint that number accordingly as commissioners under this Part, and shall assign the petitions to be tried by each.

(5.) If a commissioner to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine

or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

As to the term "prescribed," see secs. 77 and 100.

Trial of Election Petition.

93.—(1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial.

(2.) The place of trial shall be within the borough, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held.

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows:

(*a.*) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence;

With reference to the term "prescribed," see secs. 77 and 100.

From the decision in *ex parte Fitzgerald and Flint*, 39 L. J., Ex. 17, it would appear that the Court are not obliged to adjourn at the close of each meeting in order to keep their powers alive.

As the Court for the purposes of the trial of a petition have the same powers and privileges as a judge has on the trial of a Parliamentary election petition, the Court of a judge who tries an election petition is a Court of record, and its judgment can only be proved by the record. *R.* v. *Mayor, &c., of Maidenhead*, 51 L. J. (C.A.), Q. B. D. 444.

As to corrupt practices or offences against this Part, see secs. 77, 78, 82, and 83.

(*b.*) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part;

(*c.*) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final.

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at nisi prius.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.

(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement

of the decision shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

Witnesses.

94.—(1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury.

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3.) The court may examine any person so required to attend or being in court, although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

(5.) A witness on an election petition shall not be excused from answering any question relating to a corrupt practice or offence against this Part committed at or connected with the election on the ground that the answer thereto may criminate or tend to criminate him; but if he answers it he shall be entitled to receive from the court a certificate stating that he was on his examination required by the court to answer questions the answers whereto criminated or tended to criminate him, and that he answered all such questions.

As to corrupt practices or offences against this Part, see secs. 77, 78, 82, 83.

(6.) If any information, indictment, or action is at any time thereafter pending against the witness in any court for any corrupt practice or offence against this Part committed at or in relation to the election before the time of his giving his evidence, that court shall, on production and proof of the certificate, stay the proceedings, and may, in its discretion, award to him such costs as he has been put to therein.

Where a person was examined as a witness before commissioners appointed to inquire into the existence of corrupt practices at an election for a city, and received from the commissioners a certificate that he was sworn and examined on oath before the commissioners, "and upon such examination was required by us to answer questions which criminated, or tended to criminate him, and answered all such questions; but divers of the said answers to the said questions were unsatisfactory to us, and we believe were false, and false to his knowledge," he was afterwards convicted on a prosecution for bribery; and it was held that in order to entitle him to a certificate, he must make true answers to all questions, and that the commissioners had in effect refused to certify that his answers were true, and that the certificate did not operate as a stay of proceedings. *R.* v. *Hulme*, L. R., 5 Q. B. 377; 39 L. J., Q. B. 149; 22 L. T., N.S. 673; 18 W. R., 130.

(7.) The giving of or refusal to give any such certificate by the election court shall be final and conclusive.

(8.) A statement made by any person in answer to a question put to him by or before an election court shall not, except in cases of indictment for perjury, be admissible in evidence in any proceeding, civil or criminal.

In *R.* v. *Buttle*, L. R., 1 C. C. 248; 39 L. J., M. C. 115; 22 L. T., N.S. 728; 18 W. R., 956, it was held, with reference to the similar provision in the 26 & 27 Vict., c. 29, s. 7, that true answers given by a witness before election commissioners were not admissible against such witness to support an indictment for perjury committed before another tribunal, the words "except in cases of indictment for perjury" applying only to perjury committed before the commissioners.

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

Withdrawal of Petition.

95.—(1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place.

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may

apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4.) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

Abatement of Petition.

96.—(1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

Withdrawal and Substitution of Respondents.

97.—(1.) If before the trial of an election petition a respondent other than a returning officer—

(*a.*) Dies, resigns, or otherwise ceases to hold the office to which the petition relates ; or

(*b.*) Gives the prescribed notice that he does not intend to oppose the petition ;

the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

Costs on Election Petitions.

98.—(1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines ;[1] and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful.

(2.) The costs may be taxed in the prescribed manner, but according to the same principles as costs between solicitor and client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed.[2]

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be

due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and the prescribed officer shall thereon certify the recognisance to be forfeited, and it shall be dealt with as a forfeited recognisance relating to a parliamentary election petition.

[1] In *Pare* v. *Hartshorne and another*, 31 L. T., N.S. 486; 23 W. R., 138; where the barrister who tried a municipal election petition had duly certified his decision, and also orally determined that the petitioner's costs were to be paid by one respondent, and the registrar endorsed on the petition "election void, petitioner's costs to be paid by the respondent R. A. S," it was held that the endorsement was to be treated as the certificate of the barrister, and could be made a rule of court, so as to enable the petitioner to issue execution on it.

The barrister who tries an election petition has an absolute discretion in ordering how the costs of the proceedings on the petition are to be defrayed by the parties to it, and he may order such costs to be paid to an unsuccessful candidate who has been made a respondent improperly by the petitioner. The superior court has no jurisdiction to review his order, however wrong it may be. *Lovering* v. *Dawson and others*, L. R., 10 C. P. 726; 44 L. J., C.P. 321; 33 L. T., N.S. 823.

[2] The court will not interfere with the discretion of the master as to the amount allowed for counsel's fees and refreshers, unless it is manifest that he has failed to exercise it in a reasonable manner. *Hargreaves* v. *Scott*, L. R., 4 C. P. D. 21; 40 L. T., N.S. 35.

As to costs see also *Fleming* v. *Cave*, 44 L. J., C. P. 200; 32 L. T., N.S. 160. In *re Tamworth Election Petition*, 5 L. R., C. P. 172; 39 L. J., C. P. 89; 22 L. T., N.S. 98. *Tillett* v. *Stracey*, 5 L. R., C. P. 185; 39 L. J., C. P. 93; 22 L. T., N.S. 101; 18 W. R. 631. *Hughes* v. *Meyrick*, 5 L. R., C. P. 407; 39 L. J., C. P. 249; 22 L. T., N.S. 482; 18 W. R., 806.

Reception of and Attendance on the Election Court.

99.—(1.) The town clerk shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate.

(2.) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(4.) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

Rules of Procedure and Jurisdiction.

100.—(1.) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter General Rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon.

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and

subject to any amendment thereof by rules so made, have effect with the necessary modifications, as if made under this section.

Rules for the effectual execution of the Corrupt Practices (Municipal Elections) Act, 1872, were made by the judges for the time being on the rota for the trial of election petitions, on the 20th of November, 1872. Additional General Rules were made on the 10th of December, 1872, and on the 27th January, 1875. As new Rules will no doubt be made in accordance with the provisions of this Act, it has not been deemed necessary to include these Rules in this edition.

Expenses of Election Court.

101.—(1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate.

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely):

(*a.*) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner;

(*b.*) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

In *R.* v. *Mayor and Treasurer of Maidenhead* (51 L. J., (C. A.), Q. B. D. 444), it appeared that in March, 1875, a petition against the return of certain town councillors was tried before a barrister, pursuant to the provisions of 35 & 36 Vict., c. 60 (Corrupt Practices (Municipal Elections) Act, 1872), when he directed by order that the expenses of the petition and proceedings in court should be borne by the respondents, but he made no order with respect to the expenses of the court, although it was alleged that he expressed his intention,

in his judgment, of ordering one of the respondents to pay them. The Treasury paid the expenses of the court, and issued a certificate requiring the borough to repay the amount. A rate was accordingly made in August, 1875, but the Treasury withdrew that certificate, and the rate was abandoned. In December, 1875, the Treasury issued another certificate requiring the borough to repay the amount paid for the expenses of the court, and, as the amount was not paid, a *mandamus* was applied for, and after a return and trial, a special case was stated. It was held by the Court of Appeal (affirming the judgment of the Queen's Bench Division), that the court of the barrister appointed to try the municipal election petition was a court of record, and that its judgment could only be proved by the record; that the issuing of the certificate by the Commissioners of the Treasury was a ministerial and not a judicial act, and that it was therefore competent for them to cancel the first and issue the second certificate; that there had been no undue delay on the part of the Commissioners, and that they were entitled to a peremptory *mandamus*. With regard to the levying of a retrospective rate for meeting expenses of this character, it was also held that as Parliament has directed that a rate shall be levied to meet expenses which must be incurred in an inquiry by the court for the trial of an election petition, and these expenses cannot be ascertained until after the inquiry is closed, the legislature has by implication given all the powers necessary to secure the payment of these expenses by a rate—that is, it has given the corporation the power to levy a retrospective rate.

Acts done Pending a Petition not Invalidated.

102. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

Provisions as to Elections in the room of persons unseated on petition.

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy; and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

As to filling up casual vacancies, see secs. 40 and 66 (1).

For provision to meet the case of the illness of the mayor or other returning officer, see sec. 67.

Prohibition of disclosure of Vote.

104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

PART V.

CORPORATE PROPERTY AND LIABILITIES.

CORPORATE LAND.

Power to purchase Land for Town Hall, &c.

105. A municipal corporation may contract for the purchase of and hold any land not exceeding in the whole five acres, either in or out of the borough, and thereon, or on any land belonging to or held in trust for the corporation may build a town hall, council house, justices' room, with or without a police station and cells, or lock-ups, or a quarter and petty sessions-house, or an assize court-house with or without judges' lodgings, or a polling station, or any other building necessary or proper for any purpose of the borough.

The powers of a municipal corporation under sec. 40 of the 7 Wm. 4, and 1 Vict., c. 78, as to the buildings which they might erect, were more limited than those which are conferred by this section.

With regard to the borrowing of moneys for the purchase of land and the erection of buildings, see sec. 106.

See also sec. 107 as to the purchase, &c., of land, with the approval of the Treasury, when a corporation are not empowered to acquire land or to hold land in mortmain, and as to the application of the provisions of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, relating to the purchase of lands by agreement.

With respect to the principle on which buildings, which are occupied by municipal corporations for public purposes in the discharge of their statutory duties, are to be assessed to parochial rates, see *Overseers of the Poor of Chorlton-upon-Medlock* v. *Guardians of Chorlton Union and Overseers of Ardwick*, 51 L. J., Q. B. D. 408. In that case four modes of estimating the rateable value were suggested for the consideration of the court:—(1.) The annual interest actually paid on the money borrowed and expended in the purchase or erection: (2.) The annual rent which a contractor would require if he erected the premises as they stood for the purposes for which they were used: (3.) The amount of rent which a tenant, unfettered as to uses, and unrestricted as to charges, would give if the premises were in the market: and (4.) The annual profit which the corporation or school board makes or can make. The court held that the third alternative indicated the principle upon which the property was to be assessed, and that the rateable value was to be based on the amount of rent which it was estimated that a tenant unfettered as to uses and un-

restricted as to charges would give if the premises were in the market. It may be observed in connection with this case that in *Mayor, &c. of Worcester* v. *Droitwich Union Assessment Committee* (L. R., 2, Ex. D. 49), with reference to the assessment of waterworks belonging to the corporation as the urban sanitary authority, it was held that the corporation were rateable, not for such profits as a mercantile body might make by supplying water, but only with reference to such profits as were actually earned, having regard to the restrictions in the Public Health Act.

As to the liability of a corporation for income tax under Schedules A. and B. of the Income Tax Acts, in respect of municipal buildings see *Coomber* v. *Justices of Berks* (L. R., 9 Q. B. D. 17; 30 W. R., 779). That case had reference to the assessment under the Income Tax Acts, of a block of buildings erected by the justices of Berks, in the exercise of their statutory powers, the buildings comprising assize courts, with the usual rooms and offices, and a county police station, with the usual offices and accommodation for constables living there, and for prisoners. The courts and police stations were used for the administration of justice, and for police purposes. Parts of the building were also used for holding county and committee meetings, and various other occasional purposes, but no rent or profit was received or made in respect of the buildings, or any part of them. It was held that the buildings were not assessable under Schedules A. and B. of the Income Tax Acts.

Power to Borrow with approval of Treasury.

106. The council may, with the approval of the Treasury, borrow at interest on the security of any corporate land, or of any land proposed to be purchased by the council under this Act, or of the borough fund or borough rate, or of all or any of those securities, such sums as the council from time to time think requisite for the purchase of land, or for the building of any building which the council are by this Act authorized to build.

The consent of the Lords Commissioners of the Treasury is sufficiently signified by a letter signed by their secretary. The consent cannot, however, authorize an alienation or charge of corporate property further than is specified in the memorial on which it is founded. *Arnold* v. *Mayor of Gravesend*, 25 L. J., Ch. 776.

Where the council intend to apply to the Treasury for their approval of any loan, notice of the intention to make the application is to be fixed on the town hall one month at least before the application, and a copy of the intended application is during that month to be kept in the town clerk's office and to be open to public inspection. If the Treasury refuse their approval or grant it conditionally, or under qualifications, notice of the correspondence is to be in like manner fixed on the town hall for one month, and during that period a copy of the correspondence is to be kept in the town clerk's office and to be open to public inspection. (See sec. 236).

For provisions as to the repayment of loans, see sec. 112.

With regard to loans by the Public Works Loans Commissioner, see sec. 120.

The provisions of the Local Loans Act, 1875 (38 & 39 Vict., c. 83), are given in the Appendix, p. 289.

As to the buildings which the council are by this Act authorized to erect, see sec. 105.

In *Attorney-General* v. *Corporation of Birmingham* (L. R., 3, Eq. 552), it appeared that by a local Act (the Birmingham Improvement Act, 1851) the

corporation were authorized to execute certain works for the improvement of the borough which comprised the making of new approaches to the town hall, the making of new streets, and the enlarging and altering of existing streets, and to purchase the lands necessary for the works. The expenses connected with these works, including sums required for payment of principal and interest on moneys borrowed, were to be defrayed out of a "Street Improvement Rate," which was limited to sixpence in the pound per annum, and for the purpose of these works the corporation were empowered to borrow £100,000 on the security of the Street Improvement Rate. For other purposes of the local Act the corporation were empowered to levy a Borough Improvement Rate which was not to exceed 2s. in the pound per annum, and to borrow £150,000. Certain properties were by the Act exempted wholly or partially from assessment to the Street Improvement Rate. The Act provided that nothing therein should be held to alter any of the powers, privileges, and authorities vested in the mayor, &c., by or in pursuance of any Act of Parliament then in force or thereafter passed in relation to municipal corporations. By another local Act passed in 1861, the corporation were authorized to carry out further street improvements (the works being specified in the Schedule to the Act), the cost to be defrayed out of the Street Improvement Rate; and the corporation were empowered to borrow additional sums. The corporation having contracted for the purchase of land for the widening of a street which was not included in the Schedule to either of the local Acts, made application to the Treasury under the Municipal Corporations Mortgages Act, 1860 (23 Vict., c. 16), for their sanction to the purchase of the land and to the charging of the borough fund with the purchase money, and after all parties interested in the scheme had been heard before the commissioner deputed by the Treasury, the sanction applied for was given. It was held that the corporation were lawfully empowered to charge the borough fund with the amount requisite for the purchase.

In *Preston* v. *Mayor, &c., of Great Yarmouth* (7 L. R., Ch. 655; 41 L. J., Ch. 760; 27 L. T., N.S. 87; 20 W. R., 875) where a corporation were authorized to raise money for local improvements upon the security of the borough rates by an Act of Parliament which contained a provision that the corporation should in every year pay off at least £100 of the principal of the borrowed money together with the interest due thereon, and that the creditors to be paid off should be determined by ballot, it was held that the creditors were entitled to be repaid their principal only in the way mentioned in the Act, and that a creditor who was unpaid could not by giving notice to the corporation to repay his principal, entitle himself to have a receiver of the rates appointed by the court.

When a corporation were empowered by an Act of Parliament to "enlarge and improve the market place" in a borough "with all" proper works and conveniences connected therewith or belonging thereto," and, for the purposes of the Act, to borrow money on the credit of the borough fund and to purchase lands, it was held that the purchase of a site near the place where the principal market of the borough was usually held, and the erection thereon of a new corn exchange, were a lawful exercise of the powers conferred by the Act, for which money might be borrowed on the credit of the borough fund. *Attorney-General* v. *Mayor, &c., of Cambridge*, 6 L. R., H. L. 303; 22 W. R., 37.

Power to acquire Land with the approval of the Treasury.

107.—(1.) Where a municipal corporation has not power to purchase or acquire land, or to hold land in mortmain, the council may, with the approval of the Treasury, purchase or acquire any land in such manner and on such

terms and conditions as the Treasury approve, and the same may be conveyed to and held by the corporation accordingly.

(2.) The provisions of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, relating to the purchase of land by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein by persons under disability, shall extend to all purchases of land under this section.

Restrictions on alienation of Corporate Land without approval of Treasury.

108.—(1.) The council shall not, unless authorized by Act of Parliament, sell, mortgage, or alienate any corporate land without the approval of the Treasury.[1]

(2.) The council shall not, unless authorized by Act of Parliament, lease or agree to lease any corporate land without the approval of the Treasury, except as follows:[2]—

(*a.*) They may make a lease or agreement for a lease for a term not exceeding thirty-one years from the date of the lease or agreement, so that there be reserved and made payable during the whole of the term such clear yearly rent as to the council appears reasonable, without any fine.

b.) They may make a lease or agreement for a lease for a term not exceeding seventy-five years from the date of the lease or agreement, and either at a reserved rent or on a fine, or both, as the council think fit,—

(i.) Of tenements or hereditaments, the greater part of the yearly value of which, at the date of the lease or agreement, consists of any building or buildings; or

(ii.) Of land proper for the erection of any houses or other buildings thereon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith; or

(iii.) Where the lessee or intended lessee agrees to erect a building or buildings thereon of greater yearly value than the land,—of land proper for gardens, yards, curtilages or other appurtenances to be used with any other house or other

building erected or to be erected on any such land, belonging either to the corporation or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building.

[1] With regard to the sale, mortgage, &c., of corporate land with the approval of the Treasury, see sec. 109.

The municipal corporation of a borough being a seaport in the United Kingdom may, with the consent of her Majesty's Secretary of State for the Home Department, appropriate lands vested in them, or in trustees for them, as a site for a Sailor's Home, and may either retain the same accordingly or convey the same to trustees (17 & 18 Vict., c. 104, s. 546).

The Military Forces Localization Expenses Act, 1872 (35 & 36 Vict., c. 72), by section 10, provides that the council of any municipal borough may transfer to the Secretary for State for the purposes of that Act, upon such terms, and with or without payment of a pecuniary consideration, as they think expedient, any barracks, storehouses for arms or ammunition, or other buildings held for the public use or purposes of the borough. See also sec. 8 of the 36 & 37 Vict., c. 68, as to buildings transferred under that section.

As to the purchase by the Secretary of State of town halls, court-houses, or other rooms, which are situate within the curtilage of a prison, or forming part of a prison, and were used for the holding of assizes, &c., see sec. 49 of the 40 & 41 Vict., c. 21.

See also the exception in sec. 128 as to the sale, &c., of corporate lands in pursuance of an agreement made on or before the 5th of June, 1835, or of a resolution entered in the books of a body corporate on or before that day.

[2] This enactment is subject to the provisions of sec. 110 as to the renewal of leases in certain cases.

With regard to the leasing of land with the approval of the Treasury, see sec. 109.

Power to dispose of Land with approval of Treasury.

109. The council may, with the approval of the Treasury, dispose of any corporate land either by way of absolute sale, or by way of exchange, mortgage, charge, demise, lease, or otherwise, in such manner and on such terms and conditions as the Treasury approve.

With respect to the sale, mortgage, alienation, or leasing of corporate lands in certain cases without the approval of the Treasury, see secs. 108, 110, and 128, and notes on those sections.

As to applications to the Treasury for their approval, see sec. 236.

With regard to the conditions that may be imposed by the Treasury as to the investment or application of the proceeds of the sale or exchange of corporate land, see secs. 115 and 116.

A corporation may make grants of land, with the approval of the Treasury, for recreation grounds (22 Vict., c. 27); and as to the appropriation of land vested in the mayor, aldermen, and burgesses, for public baths and washhouses, see 9 & 10 Vict., c. 74, s. 24. See also sec. 111 of this Act as to sites for working men's dwellings.

Council may renew Leases, &c.

110. In the following cases,—

(*a.*) Where a body corporate of a borough was on the fifth of June one thousand eight hundred and thirty-five bound or engaged by any covenant or agreement, expressed or implied, or was enjoined by any deed, will, or other document, or was sanctioned or warranted by ancient usage or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions:

(*b.*) Where a body corporate of a borough theretofore ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, on the payment of an arbitrary fine,—

Then, notwithstanding anything in this Act, the council of a borough may renew the lease for such term or number of years, either absolutely or determinable with any life or lives, or for such life or lives, and at such rent, and on the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as the council could or might have done if this Act had not been passed.

It was held in *Attorney-General* v. *Corporation of Great Yarmouth*, 21 Beav. 625, that the similar provision in the 95th section of the 5 & 6 Wm. 4, c. 76, which enabled municipal corporations to renew leases on a fine in cases where sanctioned by ancient usage, or by custom or practice "at a fine certain," or where they have "ordinarily made renewal" upon an arbitrary fine was to be construed liberally, as it was an enabling clause, and was meant to empower a corporation to do what might be, morally, if not legally, just towards their tenants or lessees. The word "renew" is not, however, to be construed as meaning nothing more than the grant of a new lease to the holder of the former lease in respect of his occupation of the land under that lease. Although the lease which is to be renewed need not be precisely in all its terms and conditions the same as the lease that

preceded it, in substance it must be the same, or there must be such a species of uniformity as to show that in point of fact it is the same lease which is renewed.

Leases were granted by a corporation of the same property in 1778, in 1798, and 1824 to the same lessee and his assigns for 21 years at a rent of 5*s*. In the last two instances alone a fine of 7*s*. 6*d*. had been taken. The covenants varied, and there was an interval of six years between the second and third leases, during which time there was a yearly tenancy. It was held that the lease of 1824 was not a renewal of the former lease, but a distinct and separate lease, and that a renewal could not be granted at an under-value and on a fine. *Attorney-General* v. *Corporation of Great Yarmouth*, 21 Beav. 625.

WORKING MEN'S DWELLINGS.

Sites for Working Men's Dwellings.

111.—(1.) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the approval of the Treasury for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land.

(2.) The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the Treasury approve.

(3.) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease.

(4.) Every such provision shall be valid in law to all intents, and binding on the parties.

(5.) All costs and expenses incurred or authorized by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund and borough rate, or by money borrowed by the corporation under this Part.

(6.) In this section the term working men's dwellings means buildings suitable for the habitation of persons employed in manual labour and their families; but the use

of part of a building for purposes of retail trade or other purposes, approved by the council, shall not prevent the building from being deemed a dwelling.

As to applications for the approval of the Treasury, see sec. 236.

Schedule VIII. p. 238, contains the following forms relating to working men's dwellings, viz. :—Form of grant by corporation, of transfer of grant, of lease by corporation, and of assignment of lease.

REPAYMENT OF LOANS.

Power for Treasury to impose conditions as to Repayment of Money Borrowed.

112.—(1.) Where the Treasury approve a mortgage or charge under this Part they may, as a condition of their approval, require that the money borrowed on the security of the mortgage or charge be repaid, with all interest thereon, in thirty years, or any less period, and either by instalments or by means of a sinking fund, or both.

(2.) In that case the sums required for providing for the repayment of the principal and interest of the money borrowed shall be by virtue of this Act a charge on all or any of the following securities, namely, the land comprised in the mortgage (without prejudice to the security thereby created), or any other corporate land, or the borough fund, or the borough or other rates legally applicable to payment of the money borrowed or of the expenses which the money is borrowed to defray, as the Treasury direct.

As to the raising of money by a corporation by loan, see secs. 106, 111 (5), and 119.

For provisions when money borrowed is directed to be repaid by means of a sinking fund, see sec. 113.

See also sec. 126 as to schemes respecting mortgage debt incurred before the 15th of May, 1860, for the discharge of which no adequate provision then existed, and sec. 127, as to the consolidation of debts incurred before the date referred to.

Provisions as to Sinking Fund.

113.—(1.) Where money borrowed under this Part is directed to be repaid by means of a sinking fund, the council shall, out of the rents and profits of the land on which, or out of the borough fund or rates on which, the sums required for the sinking fund are charged under this Act, invest such sums, at such times, and in such govern-

ment annuities, as the Treasury direct, and shall also from time to time invest in like manner all dividends of those annuities.

(2.) The annuities shall, in the books of the Bank of England, be placed to the account of the corporation, and in the matter of this Act or of any previous Act under which the investment is made.

(3.) The dividends of the annuities shall be received and invested by such persons as the council by power of attorney under the corporate seal from time to time appoint.

(4.) No transfer shall be made of the annuities, or of any part thereof, without the consent in writing of the Treasury addressed to the chief accountant of the Bank of England.

(5.) The direction in writing of the council by power of attorney under the corporate seal, with the consent in writing of the Treasury, shall be sufficient authority to the Bank for permitting any such transfer.

As to penalty for misappropriation of moneys arising from the sale of annuities purchased under this section, or of dividends, see sec. 117.

PURCHASE OR COMPENSATION MONEY.

Provision for replacing Purchase or Compensation Money paid to Treasurer.

114.—(1.) Where purchase money or compensation has been paid to the Bank of England under an Act of Parliament in respect of land or any interest therein purchased or taken from a municipal corporation, or in respect of permanent damage to land of a municipal corporation, and the Treasury approve of the payment of the money or compensation, or of any money to arise from the sale of any Government securities in which the same has been invested, to the corporation or the treasurer, the Treasury may, as a condition of their approval, require provision to be made for raising and for investing in Government annuities a sum equivalent to the amount of money so paid.

(2.) The foregoing provisions of this Part applicable in the case of a sinking fund, as regards the mode of investing, payment of dividends, and transfer of annuities, shall be applicable in the case of investments under this section.

(3.) The Treasury shall, when it appears to them that an amount of annuities equivalent to the amount so paid has been raised by investment, direct that the accumulation

shall cease ; and the annuities and the dividends thereof shall thenceforth be applicable as if the annuities had arisen from investment under the Act of Parliament under which the purchase money or compensation became payable.

(4.) But this section shall not apply to money payable to a municipal corporation when provision for the application of the money, or of the price or compensation from which the money is derived, is contained in any local Act of Parliament relating thereto, and the money is to be paid to the corporation to be applied in conformity with that provision.

The provisions referred to in sub-section 2 are those in sec. 113.

See also sec. 116 as to the application of annuities arising from investments under this section.

As to penalty for misappropriation of moneys arising from the sale of annuities purchased under this section or of dividends, see sec. 117.

In *Re Derby Municipal Estates* (L. R., 3 C. P. D. 289) certain money having been paid into court under sec. 69 of the Lands Clauses Consolidation Act, 1845, for the purchase of lands belonging to the corporation, the court authorized its appropriation towards paying off the mortgages of certain tolls and of bonds which had been given by the corporation for money borrowed for the erection of public baths and washhouses under the 9 & 10 Vict., c. 74, s. 21, and which were payable out of the borough fund. The evidence of the town clerk showed that the borough fund of the borough was largely composed of the rents and profits of the real estates of the corporation.

Investment of Proceeds of Sale or Exchange authorized by Treasury.

115.—(1.) Where the Treasury approve of the sale or exchange of any corporate land or of any interest therein, their approval may be subject to such conditions as they think fit in relation to the investment for the benefit of the corporation of the money arising from the sale or exchange.[1]

(2.) If the Treasury direct the money to be invested in Government annuities, the foregoing provisions of this Part respecting the mode of investing, payment of dividends, and transfer of annuities shall be applicable, but not so as to make any accumulation necessary.[2]

(3.) If the Treasury consent to the application of the money or of any part thereof for the benefit of the inhabitants of the borough, they may, as a condition of their consent, require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer.[3]

[1] As to the approval by the Treasury of the sale or exchange of corporate land, &c., see sec. 109.

[2] For provisions as to mode of investing, payment of dividends, and transfer of annuities, see sec. 113. See also sec. 116, as to the application of annuities arising from investments under this section.

[3] With regard to the provision which the Treasury are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer, see sec. 114. See also sec. 116 as to the application of annuities arising from investments under this section.

Power for Treasury to authorize Application of certain Investments for benefit of Borough.

116. The Treasury may at any time approve of the application of any annuities arising from investments under either of the two last preceding sections, or of the money to arise from the sale thereof, or any part thereof respectively, for the benefit of the inhabitants of the borough; and, as a condition of their approval, may require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer, and so from time to time, and the provisions of this Part shall be applicable accordingly; but it shall not be imperative on the Treasury to impose the condition aforesaid where by reason of the application of the annuities or money to improvement of the property of the corporation or for the permanent benefit of the borough, or otherwise, under the special circumstances of the case, the Treasury in their discretion think fit to dispense with the condition.

With regard to the provision which the Treasury are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer, see sec. 114.

MISAPPROPRIATION.

Penalty for Misappropriation of Moneys.

117. If any person authorized to receive money to arise from the sale of any annuities or securities purchased or transferred under the foregoing provisions of this Part, or under any Act repealed by this Act, or any dividends thereon, or any other such money as aforesaid, appropriates the same otherwise than as directed by this Act, or by the Treasury in pursuance thereof, he shall be guilty of a misdemeanour, and shall be subject in respect thereof to the provisions of the Larceny Act, 1861, applicable to a person guilty of a misdemeanour under section seventy-five of that

Act, or to the provisions of any enactment for the time being substituted for that section.

As to annuities and securities purchased or transferred under the foregoing provisions of this Part, see secs. 113, 114, 115, and 116.

Under sec. 75 of the Larceny Act, 1861, a person guilty of a misdemeanour within that section, and convicted thereof, is liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

See also sec. 124, as to misapplication of corporate property.

CORPORATE STOCK.

Transfer of and other dealings with Corporate Stock.

118.—(1.) Any stocks, funds, or public securities (in this section referred to as stock) standing in the books of the Bank of England or of any other public company or society in the name of a municipal corporation, under any style or title of incorporation, and the dividends and interest thereof and all bonuses and accretions thereto, belonging to the municipal corporation, without being subject to any trust for charitable purposes, may be transferred by and paid to such persons as the council appoint by an instrument under the corporate seal, signed and sealed also by the clerk to the trustees of the municipal charities, who shall on request sign and seal it.

(2.) Any stock and money so standing belonging to the trustees of the municipal charities solely on charitable trusts may be transferred by and paid to persons appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk, and being also sealed with the corporate seal, which seal the mayor shall on request cause to be affixed thereto.

(3.) The dividends and interest of any stock and money so standing, belonging partly to the municipal corporation but subject to charitable trusts, may be paid to persons authorized to have the same paid to them by an instrument in writing under the corporate seal, and appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk.

(4.) In every case the receipt of the persons authorized to give a receipt to the company or society by an instrument under the corporate seal, and signed and sealed by the

clerk to the trustees of the municipal charities, shall be an effectual discharge to the company or society.

(5.) So much of the money so paid as is held on charitable trusts shall be paid over to the trustees of the municipal charities, and so much as the municipal corporation is entitled to beneficially shall go to the borough fund.

(6.) But the company or society shall not be bound to see to the application of that money, or to the validity of the appointment of the clerk to the trustees of the municipal charities, or to the execution of any instrument by any of them, or to inquire whether or not the stock or money is charged with or held on any charitable trust.

(7.) Every person authorized to so receive any money shall account to the council and to the trustees of the municipal charities for all money received by him, and on his failure so to account a court of summary jurisdiction may, on complaint either of the council or of the trustees, by summary order require him to do so.

When a local board district is constituted a borough, bank annuities purchased by the local board of the district, and registered in their name, become vested in the corporation by operation of the Public Health Act. *Hyde* v. *Bank of England* (46 L. T., N.S. 910; 30 W. R., 790).

BOROUGH BRIDGES.

Maintenance of Borough Bridges.

119.—(1.) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair shall, as to the whole of the bridge if it is wholly in the borough, or as to such part only as is in the borough be maintained, altered, widened, repaired, improved or rebuilt under the sole management and control of the council.

(2.) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge, but the notices required in the case of a county bridge shall not be required in the case of a borough bridge.

(3.) All expenses incurred for the purposes of this section shall be paid out of the borough fund or borough rate, or out of money borrowed on the security thereof.

(4.) The council, with the consent of the Treasury, may from time to time borrow on that security such sums as they deem requisite for any of those purposes, and may

mortgage the borough fund and borough rate for the purpose of securing the repayment, with interest, of any money so borrowed.

As to the powers of the justices of a county with respect to the maintenance, &c., of a county bridge, see 22 Hen. 8, c. 5; 12 Geo. 2, c. 29, s. 14; 14 Geo. 2, c. 33; 43 Geo. 3, c. 59; 52 Geo. 3, c. 110; 54 Geo. 3, c. 90; 59 Geo. 3, c. 143; and 5 & 6 Wm. 4, c. 50, s. 22.

With regard to the liability of the county as to the repair of bridges on the expiration of a turnpike trust, see sec. 12 of the 33 & 34 Vict., c. 73, which provides that "where a turnpike road shall have become an ordinary highway, all bridges which were previously repaired by the trustees of such turnpike road, shall become county bridges, and shall be kept in repair accordingly." Such bridges, however, are to be treated as if they were built subsequently to the passing of the 5 & 6 Wm. 4, c. 50, and sec. 21 of that Act provides that if any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge, shall be from time to time repaired by the parish, person, &c., who were by law before the erection of the said bridge bound to repair the said highways; provided, nevertheless, that nothing herein contained shall extend or be construed to extend to exonerate or discharge any county or any part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways, and raised approaches to any such bridge, or the land-arch thereof.

From *R.* v. *Inhabitants of Dorset*, 45 L. T., N.S. 308, it would appear that where a toll bridge has been built, and a turnpike road made in connection with it under a local Act, on the termination of the period of the trust, though the bridge is within the boundaries of a municipal borough, it becomes such a county bridge under 33 & 34 Vict., c. 73, s. 12, as to make it repairable by the inhabitants of the county, unless there is some immemorial usage imposing a liability on the inhabitants of the borough to repair all bridges within its boundaries. In the case referred to a toll-bridge was made over the B. river at W. for the purpose of connecting the back streets of W. with the county districts on the other side of the river. A turnpike road was made in connection with the bridge; both the road and the bridge were constructed under one Act. There were separate trusts of the bridge and the road, but the trustees of the one were trustees of the other. This bridge was within the municipal boundaries of the borough of W. On the expiration of the trust the county repaired the road, but the bridge was allowed to fall into disrepair. The county of D., in which the bridge was situated, was thereupon indicted for its non-repair, and was found guilty; and it was held upon the argument for a new trial, that the county was rightly convicted, and that, as there was nothing shown in the case to cast the liability to repair on the borough in which the bridge was situated, on the expiration of the period of the trust affecting the bridge, it became a county bridge repairable by the inhabitants of the county under 33 & 34 Vict., c. 73, s. 12.

With reference to applications for the consent of the Treasury to loans, see sec. 236; and for forms of mortgage and transfer of mortgage, pp. 241, 242. As to the repayment of moneys borrowed, see sec. 112.

LOANS FOR MUNICIPAL BUILDINGS.

Power to Borrow for Buildings.

120. The council of a borough may borrow money from the Public Works Loan Commissioners for the purpose of

building, enlarging, repairing, improving, and fitting up any building which they are by this Act authorized to build, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of the loan, and may mortgage the rate or borough rate to the Commissioners in accordance with the Public Works Loans Act, 1875, or any amendment thereof, in such manner and form as the Commissioners direct.

By the Public Works Loans Act (38 & 39 Vict., c. 89) the several Acts which related to loans by the Public Works Loan Commissioners were consolidated. By sec. 36 of the Act referred to, it is provided that "where the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; and they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied." The Local Government Board are accordingly empowered to appoint officers to conduct such examination on their behalf, and the officers appointed have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of the examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor.

With the view of giving additional security in the case of loans by the Loan Commissioners, sec. 19 enacts that where a loan has been granted on the security of a mortgage of any rate to any borrower who appeared to the Commissioners to have power to levy and mortgage the rate, and has been expended upon the work in respect of which or in or for the benefit of the locality in which the rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced, notwithstanding any defects in the power or title of the borrower by whom the mortgage purports to be granted; and the Commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging the rate, have the same power of making and levying and enforcing the making or levying the rate for the purpose of repaying the loan and interest, and all other sums due under the mortgage, as if the borrower had been duly constituted, and was not dissolved, and had had full power to make, levy, and mortgage the rate.

The Loan Commissioners are empowered by sec. 29, if they think fit, at any time to accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage before the time when the same is due.

There is also a provision (sec. 44) that any person who, for the purpose of obtaining a loan, wilfully gives to the Commissioners information which is false in any material particular, is to be deemed guilty of perjury.

The Public Works Loans Act, 1878 (41 Vict., c. 18), contains the following further provision:—"Whereas by section 36 of the Public Works Loans Act, 1875, the Local Government Board are required to satisfy themselves that any loan advanced by the Public Works Loan Commissioners on the security of a rate is applied to the purpose for which it is advanced, and are authorized to appoint any officers to conduct on their behalf such examination as they may think necessary with a view to ascertaining that the loan has been so applied, and it is expedient to make further provision with respect to the powers of the Local Government Board for the purposes of the said section: Be it therefore enacted as follows:—Where upon any examination, made in pursuance of section 36 of the Public Works Loans Act, 1875, with reference to a loan advanced by the Public Works Loan Commissioners for any purpose on the

security of a rate, it appears to the Local Government Board that any sum, being the whole or part of the money raised by the loan, has not been applied for the said purpose, the Local Government Board may order that sum to be, within the time named in the order, applied either for the said purpose, or towards the repayment to the Public Works Loan Commissioners of the principal of the loan, or partly in one of such ways and partly in the other, and further if it appears to them that the sum, or any part thereof, has been applied for some purpose other than that for which it was advanced, may by the same or any other order direct that a sum equal to the amount so misapplied be raised within the time and out of the fund or rate named in the order, and be applied as directed by the above-named order. An order made by the Local Government Board in pursuance of this section may be enforced by writ of *mandamus*."

By the Public Works Loans Act, 1882 (45 & 46 Vict., c. 62, s. 8), it is provided that "where, after the passing of this Act, any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account, and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made."

Section 13 of the Act of 1875, which provided for annual statements from borrowers of the amounts which they would probably apply to borrow, is repealed by the Public Works Loans Act, 1882.

The following regulations, dated 19th January, 1882, have been made by the Public Works Loan Commissioners, with reference to the fees to be paid in respect of loans:—

"The fees or sums to be paid by the applicants, in respect of loans on rates, shall not exceed the following sums, viz.:—

"On loans not exceeding £2,000, £1 1*s.* for every £100 of such loan.

"On loans exceeding £2,000 and not exceeding £25,000, £21, plus 2*s.* 6*d.* for every £100 by which such loan exceeds the sum of £2,000.

"On loans exceeding £25,000, £50.

"Where a loan is advanced by instalments, secured by one deed, there shall be paid in respect of each advance after the first, an additional fee of £1 1*s.* for every £100 of such advance, but not exceeding £3 3*s.*

"For the purpose of this Regulation, the total amount to be advanced under one security deed shall be considered as a loan; and fractional parts of £100 shall be considered as £100.

"In addition to the above fees, the applicants shall pay the stamp duty, counsel's fees, and other disbursements incurred by the Loan Commissioners in respect of the several applications.

"In respect of all business not being a loan on rates, the fees or sums payable shall be fixed by the Commissioners, regard being had to each particular case."

ADVOWSONS AND SIMILAR RIGHTS.

Obligations and Powers in respect of Advowsons, &c.

121.—(1.) Notwithstanding any sale by a municipal corporation of any advowson, or of any right of nomination or

presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, whether the sale is made before or after the commencement of this Act, the corporation and its property shall continue liable to the same obligation (if any) of providing for and maintaining or contributing to the maintenance of any priest, curate, preacher, or minister, as if the sale had not been made; and that liability may be enforced by the same means, at the instance of the Crown or otherwise, as if this Act had not been passed, and the advowson or right had remained vested in the corporation.

(2.) Where a municipal corporation holds land subject to an obligation to provide a priest, curate, preacher, or minister, nothing in this Act shall preclude the corporation from augmenting or endowing his office, either by assigning to him and his successors in office a competent portion of the land, or by charging thereon an annual stipend, either in money or in kind, for his and their use and benefit, except that no such augmentation or endowment shall be valid without the approval of the Treasury.

(3.) Where a municipal corporation sells a right of nomination to an ecclesiastical preferment, not being a benefice or perpetual curacy, that preferment shall, from and after the sale, be a benefice presentative, and the holder thereof and his successors shall be a body corporate, having perpetual succession and capable of taking and holding in perpetuity all property granted to or purchased for them by the Governors of the Bounty of Queen Anne, or by other persons contributing with those governors as benefactors.

Regulations as to Sale of Ecclesiastical Patronage belonging to Municipal Corporation.

122.—(1.) Where at the passing of the Municipal Corporations Act, 1835, a body corporate, or any particular class, number, or description of members thereof, or the governing body thereof, were in their corporate capacity, and not as trustees of a charity, seised or possessed of any manor or land whereto any advowson, or right of nomination or presentation to any benefice or ecclesiastical preferment was appendant or appurtenant, or of any advowson in gross, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, the advowson or right, if not sold before the

commencement of this Act, shall be sold at such time and in such manner as the Ecclesiastical Commissioners for England direct, so that the best price be obtained for the same.

(2.) Upon any such sale the council shall, with the consent in writing of those Commissioners, signed by any three or more of them, convey, under the corporate seal, the advowson or right to the purchaser, or as he directs, and the advowson or right shall vest accordingly.

(3.) The proceeds of sale shall be paid to the treasurer and invested in Government securities, and the income thereof shall go to the borough fund; or those proceeds, or any part thereof, may be applied towards the liquidation of any debt contracted by the body corporate before the passing of the Municipal Corporations Act, 1835.

(4.) Any vacancy arising before the sale shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which the benefice or preferment is situate.

In *Hine* v. *Reynolds*, 2 M. & G. 71, it was held that where the right of the corporation to nominate and appoint a clergyman to the office of curate or reader fell within the provisions of the 1 & 2 Vict., c. 31, now repealed, and the office became vacant before any sale had been effected by the corporation, the right of presentation or nomination vested in the bishop of the diocese.

In a case in which an advowson belonging to the corporation had been sold under powers similar to those conferred by this section, and the amount realized by the sale was standing to the credit of the corporation at the Bank of England, a charging order on this fund was made for the amount of the costs which the corporation, as defendants, were ordered to pay to the relator, in an information against the corporation, to restrain them from applying certain funds in aid of the borough fund. *Attorney-General* v. *Corporation of Thetford*, 2 L. T., N.S. 370; 8 W. R., 467.

SPECIAL RATES.

Power to continue Rates for Special Purposes.

123. Where before the passing of the Municipal Corporations Act, 1835, a rate might be levied in a borough for the purpose of watching conjointly with any other purpose, nothing in this Act shall prevent the levying and collecting of such a rate for that other purpose solely, or affect the powers given in any Act anterior to the Municipal Corporations Act, 1835, as far as they relate to that other purpose; but where the amount of that rate might not before the passing of the Municipal Corporations Act, 1835, exceed a given rate in the pound on the value of property rateable thereto, the rate to be levied for the other purpose

solely shall not exceed such proportion of that given rate as appears to have been expended for that other purpose by an account of the average yearly expenditure during the last seven years before the passing of the Municipal Corporations Act, 1835, or during those of the same seven years during which the rate was levied.

As to the levy of a watch rate, see secs. 197-200.

MISAPPLICATION OF CORPORATE PROPERTY.

Prohibition of Expenditure of Corporate Funds on Parliamentary Elections.

124.—(1.) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2.) Any bond, covenant, recognisance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3.) Any payment, application, bond, covenant, recognisance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4.) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5.) Any resolution, byelaw, or other proceeding of a council, purporting to direct or authorize any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6.) If any member of a municipal corporation authorizes or directs any payment or application forbidden by this

section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour, and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7.) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8.) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the court directs, for costs, as between solicitor and client.

(9.) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses relating to parliamentary elections.

TRANSITORY PROVISIONS.

Transfer of Investments made before 1860 *in names of Trustees.*

125.—(1.) In the several cases following:—

(*a.*) Where before the fifteenth of May one thousand eight hundred and sixty the Treasury on approving of a mortgage of corporate land had required a sinking fund in names of trustees;

(*b.*) Where before the same day the Treasury, on approving of the payment to a corporation or their treasurer of purchase money for or compensation in respect of corporate land, or of money arising from sale of Government securities

in which the same had been invested, had required provision for raising by investments in names of trustees an amount equivalent to the amount so paid ;

(*c.*) Where before the same day the Treasury, on approving of a sale or alienation of corporate land, had required the investment of the proceeds in names of trustees ;

The Treasury, if they have not so done before the commencement of this Act, may require any securities in which any such investments had been made to be transferred into the name of the corporation in the matter of this Act, or may require any money applicable for the purposes of such sinking fund to be invested in the purchase of Government annuities in the name of the corporation and in the matter of this Act.

(2.) The order in writing of the Treasury for that purpose shall be a sufficient discharge to the trustees from all claims in respect of the transfer of the securities in pursuance of the order.

(3.) The Treasury may, in the cases aforesaid, give such directions as they might give in the analogous cases in this Part provided for, arising after the commencement of this Act, or as near thereto as circumstances require, and the provisions of this Part shall apply accordingly.[1]

(4.) Where any such transfer as aforesaid has before the commencement of this Act been made into the name of the corporation in the matter of any Act repealed by this Act, this Act shall, if the Treasury so direct, be substituted in the title of the account for that Act.

[1] As to the directions which the Treasury are empowered to give in analogous cases, see secs. 113, 114, 115 and 116.

Scheme respecting Mortgage Debts incurred before 1860.

126. Where in a borough any mortgage debt had been before the fifteenth of May one thousand eight hundred and sixty incurred, for discharge of which no adequate provision then existed, the council, if they have not so done before the commencement of this Act, may submit to the Treasury any scheme for the discharge thereof by instalments, or a sinking fund, or both, extending over any term of years, and if the Treasury approve of the scheme, the sums required for discharge of the debt as proposed therein shall by virtue of this Act become charged on all or any part of the corporate land, or the borough fund, or borough

rate, or any other rate applicable to discharge of the debt, or on all or any of those securities, as the Treasury direct, and the provisions of this Part applicable for repayment of money borrowed on mortgage by a sinking fund, or instalments, or both, except the limitation to a period of thirty years, shall apply for discharge of the debt.

With reference to applications for the approval of the Treasury of a scheme under this section, see sec. 236.

As to the provisions of this Part applicable for repayment of money borrowed on mortgage by a sinking fund or instalments, see secs. 112 and 113.

Consolidation of Debts incurred before 1860.

127. Where in a borough debts had from time to time, before the fifteenth of May one thousand eight hundred and sixty, been incurred under Acts of Parliament, with different periods assigned for discharge thereof, the council, if they have not so done before the commencement of this Act, may, with the consent of the Treasury, and with the previous consent in writing of the persons or bodies corporate to whom the debts are owing, consolidate the debts into one, and provide for discharge of the consolidated debt by annual instalments, or a sinking fund, or both, extending over a period not exceeding thirty years, and make the instalments or payments a charge on the borough fund, or borough rate, or any other rate applicable to the discharge of the debts, or on all or any of those securities, as the Treasury direct.

With reference to applications for the consent of the Treasury under this section, see sec. 236.

Saving for Sales, &c. in pursuance of past Contracts and Resolutions.

128. Nothing in this Act shall affect any power to sell, mortgage, alienate, or lease corporate lands in pursuance of an agreement made on or before the fifth day of June one thousand eight hundred and thirty-five, or of a resolution entered in the books of a body corporate on or before that date.

Saving for Rates in respect of past Debts.

129. Nothing in this Act shall prevent the levying or collection of any rate for the purpose of paying any debt

contracted before the commencement of this Act or any interest thereon.

Saving for Rights of Creditors in respect of Tolls or Dues.

130. It shall not be lawful for the council of a borough of which the body corporate had before the passing of the Municipal Corporations Act, 1835, contracted any lawful debt chargeable on any tolls or dues belonging or payable to that body corporate, or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues or any part thereof were or was applicable before the passing of that Act, to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission thereof or exemption therefrom or of or from any part thereof, except with the consent in writing, under the hands of a majority in number and amount, of the creditors to whom the debt is due, until after the debt and all arrears of interest due thereon have been fully paid and satisfied.

Saving for Lawful Debts Contracted before 5 & 6 *Will.* 4, *c.* 76.

131.—(1.) Notwithstanding anything in this Act, the application of the borough fund to the several payments specified in the Fifth Schedule or otherwise authorized by this Act shall be subject to the payment of any lawful debt due from the municipal corporation to any person which was contracted before the passing of the Municipal Corporations Act, 1835, and is unredeemed, or of so much thereof as the council from time to time are required or deem it expedient to redeem, and to the payment from time to time of the interest on so much thereof as remains unredeemed.

(2.) The council may from time to time execute under the corporate seal any deed or obligation in the name of the corporation for securing repayment and satisfaction of any such debt or obligation contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

(3.) Money borrowed by a council for the purpose of being applied, and applied, in or towards satisfaction and discharge of any such pre-existing debt or obligation, shall be deemed to be a debt contracted by or on behalf

of the corporation before the passing of the Municipal Corporations Act, 1835.

The provisions of this section are subject to the conditions specified in sec. 132.

In *Holdsworth* v. *Mayor, &c. of Dartmouth*, (11 A. & E. 490; 4 Jur. 605,) where a bond was given in 1833, by a corporation to one of the aldermen of the borough, in respect of costs which he had incurred without the authority of the corporation in defending *quo warranto* informations against him and other members, the object of the informations being to impeach the title of the corporation as a body, it was held, that the old corporation, and the new corporation, under the 4 & 5 Wm. 4, c. 76, were liable on the bond, and that the liability was a "lawful debt," within the corresponding section of the Act of 1835.

In *Pallister* v. *Mayor, &c. of Gravesend*, and *Arnold.* v. *Mayor &c. of Gravesend*, (9 C. B. 774; 2 Kay & J. 574; 2 Jur., N.S. 703; 25 L. J., Ch. 776); it was held that a bond given by a corporation after the passing of the 5 & 6 Wm. 4, c. 76, but before the passing of the 6 & 7 Wm. 4, c. 104, to secure a sum of money borrowed for the purpose of paying debts contracted by the corporation before the passing of the first-mentioned Act, was valid, and that a judgment upon a bond given by a corporation before the 5 & 6 Wm. 4, c. 76, operated as a charge upon all lands and hereditaments of the corporation, whether acquired before or after the passing of the 5 & 6 Wm. 4, c. 76.

Saving against New Liability to Debts contracted before 5 & 6 Will. 4, c. 76.

132. Nothing in this Act shall make liable to the payment of any debt contracted by any body corporate of a borough before the passing of the Municipal Corporations Act, 1835, any part of the real or personal estate of that body corporate which before the passing of that Act was not liable thereto or authorize the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of that Act, which before the passing of that Act could not lawfully be levied therein towards payment of the same.

PART VI.

CHARITABLE AND OTHER TRUSTS AND POWERS.

CHARITABLE TRUSTS.

Administration of Charitable Trusts and Vesting of Legal Estate.

133.—(1.) Where at the passing of the Municipal Corporations Act, 1835, the body corporate of a borough, or

any one or more of the members thereof, in his or their corporate capacity, stood solely, or together with any person or persons elected solely by that body corporate, or solely by any particular number, class, or description of members thereof, seised or possessed, for any estate or interest, of land, in whole or in part in trust or for the benefit of any charitable uses or trusts, and the legal estate in that land was, at the passing of the Municipal Corporations Act, 1835, vested in the body corporate or person or persons so seised or possessed thereof, and was by the Charitable Trusts Act, 1853, vested in the trustees appointed by the Lord Chancellor under the Municipal Corporations Act, 1835, or such of them as should be surviving and continuing trustees under that appointment, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances, and on such and the same trusts, as the same were subject to before such vesting, then, in every case, on the death, resignation, or removal of any trustee, and on any appointment of a new trustee, the legal estate in that land and in all other lands subject to any such charitable uses or trusts for the time being vested in the trustees or any of them, or in any persons, or the heirs or devisees of any person deceased, resigned, or removed, shall vest in the persons who after such death, resignation, or removal, and such appoinment of a new trustee, continue or are the trustees for the time being, without any conveyance or assurance.

(2.) Nothing in this section shall take away, abridge, or prejudicially affect any power, authority, or jurisdiction of the Charity Commissioners for England and Wales.

The provision referred to in the Charitable Trusts Act (16 & 17 Vict., c. 137, sec. 65) is as follows: "The legal estate in all lands which at the time of the passing of the Act of the session holden in the 5th and 6th years of King William IV., c. 76, was vested in the body corporate of any borough which became subject to the provisions of the said Act, or in any one or more of the members of such body corporate, in his or their corporate capacity, solely or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, in whole or in part in trust or for the benefit of any charitable uses or trusts whatsoever, and which legal estate shall not have been since duly conveyed or assured to and vested in the trustees appointed by the Lord High Chancellor under the provisions of the said Act, or such of them as shall be surviving and continuing trustees, or otherwise lawfully conveyed, aliened, or disposed of by such body corporate or member or members thereof, shall from and immediately after the passing of this Act, and without any actual conveyance, assignment, or other assurance thereof, be vested in the trustees so appointed, or such of them as shall be surviving and continuing trustees under such appointment as

aforesaid, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances and upon such and the same trusts as the same were respectively subject to previously to such vesting; and in every case, upon the death, resignation, or removal of any of the trustees, and upon any appointment of any new trustee or trustees respectively, the legal estate in the same lands, and in all other lands subject to any such charitable uses or trusts which may for the time being be vested in the trustees, or any of them, or in any persons, or the heirs or devisees of any person who may have died, resigned, or been removed, shall vest in the persons who after such death, resignation, or removal, and such appointment of such new trustee or trustees respectively, shall continue or be the trustees for the time being, without any conveyance or assurance whatsoever."

Where a corporation held trust estates for charitable uses, the surplus of the proceeds of which was to be applied for the benefit of the borough, and the town council presented a petition to the Lord Chancellor for leave to attend before the Master and propose a list of persons, being members of the corporation, as trustees for the estates, it was held that an order for payment out of the borough fund of the cost of those proceedings was illegal, the management of the trust estates being taken away from the corporation by 5 & 6 Will. 4, c. 76, s. 71. *R.* v. *Mayor, &c., of Warwick*, 10 Jur. 962; 15 L. J., Q. B. 306.

As to the powers of the Charity Commissioners, see 16 & 17 Vict., c. 137; 18 & 19 Vict., c. 124; 21 & 22 Vict., c. 94; 23 & 24 Vict., c. 136; 25 & 26 Vict., c. 112; 32 & 33 Vict., c. 110; and 37 & 38 Vict., c. 87.

SPECIAL TRUSTS AND POWERS.

Corporation to be Trustee where Corporators Trustees.

134. The municipal corporation of a borough shall be trustees for executing by the council the powers and provisions of all Acts of Parliament made before the passing of the Municipal Corporations Act, 1835 (other than Acts made for securing charitable uses and trusts), and of all trusts (other than charitable uses and trusts) of which the body corporate of the borough, or any of the members thereof in their corporate capacity, was or were sole trustees before the first election of councillors in the borough under the Municipal Corporations Act, 1835.

In *R.* v. *Mayor, &c., of Poole*, 7 A. & E. 738; 3 N. & P. 125; Lord Denman, C. J., observed, with reference to the corresponding provision in sec. 72 of the Municipal Corporations Act, 1835: "By the 72nd section of the statute, the new body corporate are made trustees for executing by the council of the borough the powers and provisions of the Acts of Parliament relating to the borough made before the passing of the Act, other than any Act made for securing charitable uses and trusts. Under this section the council became substituted in the local Act for the mayor, bailiffs, and burgesses; they have the same powers and no greater; they must administer the local Act, but they are bound by it."

In *Staniland* v. *Hopkins*, 9 M. & W. 178, it was held that the section referred to (72nd) should be construed as follows: "The body corporate of each borough shall be trustees and commissioners for executing, or shall be charged with the duty of executing, by the council of such borough, the powers and

provisions of all Acts of Parliament now made, and of all trusts, of which powers, provisions, or trusts, the body corporate, or any of the members thereof in their corporate capacity, was or were sole commissioners or trustees respectively, or were solely charged with the duty of executing them, before the time of the first election of councillors in such borough."

Appointment of Members of Council to be Trustees in cases of Joint Trusts and other Cases.

135.—(1.) In every borough in which the body corporate, or a particular or limited number, class, or description of members thereof, or of persons appointed by the body corporate, was or were before the passing of the Municipal Corporations Act, 1835, trustees jointly with other trustees for the execution of any Act of Parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees thereof, by any statute, charter, byelaw, or custom, before the passing of the Municipal Corporations Act, 1835, was or were, lawfully appointed to or exercised any powers, duties, or functions, not otherwise in the Municipal Corporations Act, 1835, or this Act, provided for, and the continuance of which is not inconsistent with the provisions of the Municipal Corporations Act, 1835, or this Act, the council, on the day prescribed in any Act of Parliament as aforesaid, or in the deed or will by which the trust is created, for a new election, nomination, or appointment of trustees, or on which a new election, nomination, or appointment has usually been made (and if there is no day prescribed or usually observed, then on or within ten days after the first of January in every year), shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of the body corporate of the borough who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of the body corporate ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of the Municipal Corporations Act, 1835.

(2.) In every case of extraordinary vacancy among the trustees or persons so appointed, the council shall forthwith appoint one other member of the council in the room of the person by whom the vacancy has been made, to hold

his trust or office for such time as that person would regularly have held it.

The section in the Municipal Corporations Act, 1835 (sec. 73) on which this clause is based, it was said in *Staniland* v. *Hopkins*, 9 M & W. 178, did not apply to any case provided for by sec. 72 of that Act, which was similar in its terms to sec. 134 of this Act.

LOCAL ACTS.

Transfer of powers of Local Authorities to Municipal Corporations.

136.—(1.) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching, regulating, or improving, a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act.

(2.) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3.) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom.

When the powers of trustees under a local Act are under this section transferred to a municipal corporation, the town council, in carrying out the provisions of the local Act, are to follow the mode prescribed by the Municipal Corporations Act for their proceedings as a town council. The powers transferred to the town council are distinct from the mode of carrying them out; what was formerly done by the trustees under the local Act is to be done by the town council of the borough, but the mode of doing it is to be the mode prescribed generally by the Municipal Corporations Act for proceedings by the town council. A local Act required that all orders and proceedings of the

commissioners for executing the Act should be at a public meeting, of which notice in writing should be given by affixing the same upon the door of the parish church. The powers of the commissioners having been transferred to the town council, it was held that notice of a meeting for the purposes of the local Act was properly given by affixing the same on or near the door of the town hall in accordance with the Municipal Corporations Act. *Mayor, &c., of Kidderminster* v. *Court* (or *Croft*), 1 E. & E. 770; 5 Jur. N.S. 1,055; 28 L. J., M. C. 148.

In *Swinford* v. *Keble*, L. R. 1 Q. B. 549, it was held that a Local Board of Health, constituted under the Public Health Act, 1848, were not trustees acting under any Act for paving, lighting, supplying with water or gas, or cleansing, &c., whose powers could be transferred to a municipal corporation under sec. 2 of the 20 & 21 Vict., c. 50—the enactment on which this section is based.

It is to be observed that this section will have now but very limited operation, as under the Public Health Act, 1875 (38 & 39 Vict., c. 55), the mayor, aldermen, and burgesses of a borough, are, with but few exceptions, the urban authority of the borough, and by sec. 10 of that Act it is provided that "where any local Act other than an Act for the conservancy of any river is in force within the district of an urban authority, conferring on any commissioners, trustees, or other persons, powers for purposes the same as, or similar to, those of this Act (but not for their own pecuniary benefit), all the powers, rights, duties, capacities, liabilities, and obligations of such commissioners, trustees, or other persons, in relation to such purposes, shall be transferred and attached to the said urban authority."

As to the alteration by provisional order of local Acts, the powers of which have become vested in the municipal corporation by operation of the Public Health Act, 1875, or otherwise, see sec. 303 of the Public Health Act. That section enacts as follows:—"The Local Government Board may, on the application of the local authority of any district, by provisional order, wholly or partially repeal, alter, or amend any local Act, other than an Act for the conservancy of rivers, which is in force in any area comprising the whole or part of any such district, and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject matters as this Act. Any such provisional order may provide for the extension of the provisions of the local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority shall have jurisdiction for the purposes of this Act in any area which is by such order included in or excluded from such district."

As to the provisions of the Public Health Act with respect to provisional orders authorized to be made by the Local Government Board under that Act, see secs. 297 and 298 of the Public Health Act.

Power for Council to extend Local Lighting Act.

137.—(1.) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorized to be levied for lighting.

(2.) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions ; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough.

The Public Health Act, 1875 (38 & 39 Vict., c. 55), by sec. 161, empowers any urban authority "to contract with any person for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district, and may provide such lamp-posts and other materials and apparatus as they may think necessary for lighting the same." It is competent to the town council of a borough acting as an urban authority to provide for the lighting of the borough under this section instead of under the local Act, if any, in force in the borough.

Exercise of Powers under Local Acts.

138. Everything provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the Schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature, if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

By a local Act, a Court of Requests was created at Bristol, and certain fees according to a table therein contained, were fixed to be paid to the assessor and to officers of the court, with power for the justices of the peace for the city, at any general quarter sessions of the peace, to lessen or reduce them. The town council, by an order of the council, assuming to act under sec. 8 of the 6 & 7 Will. 4, c. 105 (the provision on which this section is based), reduced the fees payable to the assessor and clerk of the court. It was held that the regulation of the fees of the Court of Requests was a matter relating "to the business of a court of civil judicature," and that the town council had no authority to interfere with it. *Palmer* v. *Powell*, 6 M. & W. 627.

PART VII.

BOROUGH FUND: BOROUGH RATE: COUNTY RATE.

BOROUGH FUND.

Payments to Borough Fund.

139. The rents and profits of all corporate land, and the interest, dividends, and annual proceeds of all money, dues, chattels, and valuable securities belonging or payable to a municipal corporation, or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (except where and as far as the application thereof is otherwise provided for) shall go to the borough fund.

In *Parr* v. *Attorney-General*, 6 Jur., 245; 8 C. & F. 409, Lord Campbell laid down that although, before the Municipal Corporations Act passed, the corporation property was not subject to any trust, and the corporations might do with it whatever they chose, and, generally speaking, no relief could be obtained either at law or in equity for any misapplication of the property, the Municipal Corporations Act created a trust for corporation purposes: first, for certain specified purposes, and then when these were answered, for other general purposes for the benefit of the town. The property of the corporation being trust property, there was nothing in the Act of Parliament to take away the jurisdiction which the Court of Chancery would otherwise have over it, or to take away the right which the subject would otherwise have to relief in a court of equity in case of any misapplication of the trust property. It was also held in *Attorney-General* v. *Corporation of Lichfield*, 11 Beav. 120, 17 L. J., Ch. 472, that the borough fund created under the Municipal Corporations Act was a trust fund, and that the Court of Chancery had authority and jurisdiction to compel the parties who received and applied the fund to account for the sums they received and the application of them.

Application of Borough Fund.

140.—(1.) The borough fund shall be applicable to and charged with the several payments specified in the Fifth Schedule.

(2.) The payments specified in Part I. of that schedule may be made without order of the council; those specified in Part II. may not be made without such order.

(3.) No other payment shall be made out of the borough fund, except—

(*a.*) Under the authority of an Act of Parliament; or

(*b.*) By order of the council; or

(*c.*) By order of the court of quarter sessions for the borough; or

(*d.*) By order of a justice in pursuance of this Act; or

(*e.*) In cases in which the court of quarter sessions for a county, or a justice acting in and for a county in the discharge of his judicial duty, might make an order for the payment of money on the treasurer of the county.

(4.) Saving, nevertheless, in relation to the application of the borough fund as authorized by this section, or otherwise by this Act, all rights, interests, and demands of all persons in or on the real or personal estate of the municipal corporation, by virtue of any legal proceeding, or of any mortgage, or otherwise.

As to the payments which may be made out of the borough fund without order and those which may not be made without order, see Schedule V., Parts I. & II., pp. 228, 229.

As to the levy of a borough rate when the borough fund is insufficient for the purposes to which it is applicable, see sec. 144.

The following cases may be referred to as bearing on the question as to the payments which can legally be made out of the borough fund:—

The Town Council of B., in January, 1837, ordered the payment from the borough fund of the costs of opposing three rules *nisi* for a *quo warranto* against three persons for exercising the office of councillor, they having been declared to be duly elected and having accepted office, and also a rule *nisi* for a criminal information against an alderman of the borough for insulting a borough justice. After the costs had been paid and had been included in accounts which had been audited, the court, on an affidavit by a burgess in pursuance of the instructions of a subsequent town council, granted a *certiorari* to bring up the orders, and quashed them on the ground that the purposes for which the orders were made were not public purposes. Patteson, J: There may be a hardship on an individual in subjecting him to legal proceedings for accepting an office which he is fineable for not accepting. But if we were to admit that the borough fund may be applied to defend his office, the consequence would be that the town council would be bound to defend all parties against whom such proceedings were taken—enemies as well as friends. Williams, J.: With regard to the rule for a criminal information, how can it be for the interest of a borough that an individual who has committed a delinquency should not be punished? *R.* v. *Mayor, &c., of Bridgwater*, 10 A. & E. 281; 2 P. & D. 558; *R.* v. *Paramore*, 10 A. & E. 286. In a case in which there was a question which of two candidates had been duly declared to be elected councillor, the mayor having rejected the vote of one of the candidates, the excluded candidate obtained a rule *nisi* for a *mandamus* to the mayor, aldermen, and burgesses to receive his vote, and to permit him to act as councillor. Certain costs which were incurred in opposing the rule, it was held, could not be defrayed out of the borough fund, the rights of the corporation not being in any way affected by the issue of the question. *R.* v. *Mayor, &c., of Leeds*, 4 Q. B. 796; 12 L. J., Q. B. 369; 7 Jur., 669. See also *R.* v. *Mayor, &c., of Cambridge*, 4 Q. B. 801., in which it was held that where a *mandamus* had been obtained commanding the town council to proceed in the election of a councillor to fill up a vacancy caused by ouster by judgment in *quo warranto* the defendants generally were liable for the costs, and that the court had no power to determine that the expenses should be paid out of the borough

fund. In that case the court expressed no opinion as to whether or not the costs were payable out of that fund. But a municipal corporation is justified in discharging out of the corporate funds the expenses of defending *quo warranto* informations against individual members, if the object of the informations is to impeach the title or destroy the legal existence of the corporation as a body. *Holdsworth* v. *Mayor, &c., of Dartmouth*, 10 A & E. 490; 4 Jur., 605. See also *Attorney-General* v. *Mayor, &c., of Norwich*, 2 Mylne & C. 406; 1 Jur., 398.

On the holding of a court for revising the burgess lists a riot took place, and the mayor was assaulted when in the execution of his duty. A charge of riot and assault was preferred against four persons, and they were bound over to appear at the next quarter sessions to answer an indictment on the prosecution of the mayor. The indictment was removed by *certiorari* to the assizes, when the defendants were acquitted. The court made no order as to the prosecutor's costs. Subsequently the council made an order for the payment of these costs, although they had not authorized the prosecution to be undertaken at the expense of the corporation. The order for the payment of the costs was quashed. Lord Denman, C. J.: "Without saying that it is not quite proper that a corporation should incur expense to protect its officers in the performance of any necessary duty, the objection that the council of the borough did not previously authorize the expenditure, must prevail." *R.* v. *Town Council of Lichfield*, 4 Q. B. 893; 12 L. J., Q. B. 308; 7 Jur., 670. At a court held before the mayor and assessors of the city of R., for the revision of the burgess list, the names of several burgesses were expunged, and they obtained rules calling upon the succeeding mayor and assessors to show cause why writs of *mandamus* should not issue, commanding them to hold fresh courts of revision. The corporation under their common seal retained the plaintiff as attorney to show cause and otherwise defend these rules, and he accordingly did so; and the court having made the rules absolute, he appealed to a court of error, who affirmed the judgment. The plaintiff having sued the corporation for his costs, it was held that he was entitled to judgment, and there being nothing to show that the litigation on the part of the corporation was not justifiable, that the expenses were payable out of the borough fund. *Lewis* v. *Mayor, &c., of Rochester*, 9 C. B., N.S. 401; 30 L. J., C. P. 169; 3 L. T., N.S. 300; 9 W. R. 100; 7 Jur. N.S. 680. Where a town council removed a town clerk from his office by resolution for misconduct, and refused his claim for compensation, the costs of an attorney employed in opposing a *mandamus* to assess compensation were held to be properly chargeable on the borough fund, although the jury found on an issue submitted to them that the officer had not been guilty of such misconduct as would warrant his dismissal, it not being shown that the town council acted otherwise than *bonâ fide* in the removal. *Reg.* v. *Lichfield* (*Town Council*), 10 Q. B. 534; 16 L. J., Q. B. 333; 11 Jur. 888. It was also held in this case that an objection that the payment was to be on account of the solicitor's costs before the bill of costs had been delivered could not be sustained, unless it were clearly made out that the sum ordered to be paid exceeded the sum due to the solicitor. See also *R.* v. *Mayor, &c., of Tamworth*, 19 L. T., N.S. 433, in which it was held that the costs of litigation undertaken *bonâ fide* and on reasonable grounds, may be paid out of the borough fund, though the litigation may be unsuccessful.

In *R.* v. *Mayor, &c., of Liverpool*, 41 L. J., Q. B. 175, it appeared that the conduct of S., a police-inspector of public houses was impugned in articles in a newspaper, with reference to the character which he had given to an applicant for a licence. The publisher of the paper was summoned for a libel by S., who had received an intimation from the chief constable that he ought to take proceedings. The town council adopted a resolution of the watch committee ordering the sum of thirty guineas to be paid to S. for his expenses in the proceedings on the summons for libel. It was held that the order was not in respect of an "allowance" nor a charge or expense for the purposes of the constabulary force, nor an applica-

tion of the fund for the public benefit of the inhabitants of the borough, and that a rule must go for a *certiorari* to bring up the order for the purpose of being quashed. In *R.* v. *Town Council of Stamford*, 13 L. J., Q. B. 177; 8. Jur., 558, and *R.* v. *Thompson*, 5 Q. B. 477, it was held that the town council were not empowered to order the treasurer to pay out of the borough fund expenses incurred by constables of the borough in conducting proceedings for an assault upon them, and defending them upon an indictment against them for an assault. Lord Denman, C. J.: The watch committee might have made an order for the payment of these expenses, subject to the approbation of the town council, but that does not authorize the town council to make the order. In *R.* v. *Mayor, &c., of Exeter*, L. R. 6 Q. B. 135; 44 L. T., N.S. 101; 29 W. R., 441, it was held that where the chief constable of a borough having by the direction of borough magistrates, laid an information against a person for conspiracy, and a verdict for £200 was recovered by such person against the chief constable in an action for malicious prosecution, it was not competent to the town coun il to order payment of the chief constable's costs out of the borough fund. See however the provisions in sec. 226 (3).

From *R.* v. *Sir Charles Reed*, L. R., 5 Q. B. 483; 49 L. J., Q. B. 600; 42 L. T., N.S. 835; 28 W. R. 787, it would appear that a municipal corporation are not empowered to borrow, except in accordance with express statutory provisions; and that the payment of interest on moneys borrowed without statutory authority cannot legally be paid out of the funds of the corporation. See also *Attorney-General* v. *Mayor of Lichfield*, 13 Sim. 547; 4 Q. B. 893; 12 L. J., Q. B. 308; 7 Jur., 670; and *R.* v. *Mayor of Warwick*, 8 Q. B. 926; 15 L. J., Q. B. 306; 10 Jur., 962, as to loans and payment of interest without legal authority.

In *R.* v. *Mayor, &c., of Glouœster*, 5 Q. B. 862; 13 L. J., Q. B. 233; 8 Jur. 573, it was held that fees, which a justices' clerk in a borough was authorized to take, by a table regularly allowed and confirmed, in respect of charges against persons apprehended and brought before the borough justices by constables appointed by the watch committee, and which could not be recovered from such persons, either on account of their not being specifically imposed on them by Acts of Parliament, or from their inability to pay, were expenses to be defrayed out of the borough fund.

With regard to the expense of opposing or promoting Bills in Parliament, see the Municipal Corporations (Borough Funds) Act (35 & 36 Vict., c. 91), in Appendix, p. 311.

With respect to charging the borough fund with the cost of opposing a Bill in Parliament, see also *Attorney-General* v. *Mayor, &c., of Wigan*, 1 Kay, 268; 5 De G., M. & G. 52; 23 L. J. (Ch.) 429; 18 Jur. 299; *Roberts* v. *Mayor, &c., of Sheffield*, L. R. 6 Q. B. 652; 24 L. T., N.S. 659; 19 W. R. 1159; and *Attorney-General* v. *Mayor, &c., of Brecon*, L. R. 10 Ch. 204; 48 L. J. Ch. 153; 40 L. T., N.S. 52; 27 W. R. 332.

In *Attorney-General* v. *Mayor, &c., of Wigan*, where a borough had a river flowing through it, which was the main sewer of two-thirds of the town, and a Bill was before Parliament for the purpose of enabling certain persons to abstract a large portion of the water from the river before it reached the town, it was held that under the Municipal Corporations Act, whether the corporation had any surplus fund or not, they would be justified in incurring the expense of an information for an injunction to prevent the nuisance which would arise, and that they were equally justified in applying their funds in opposing the Bill for legalising the threatened injury to the river.

In *Roberts* v. *Mayor, &c., of Sheffield*, it appeared that in the municipal borough of S. there was a waterworks company, incorporated by Act of Parliament, which supplied the greater part of the borough with water. By this Act, the company, after a certain time, on the requisition of the town council, were bound to give a constant supply of water, and they were empowered to make regulations to be observed by the consumers, subject to the approval of two justices, any person aggrieved having the right to oppose the regulations before the justices.

The town council having required the company to give a constant supply, the company proposed certain regulations, which were opposed before the justices by the corporation, on the ground that they imposed too onerous conditions on the consumers; and the justices modified the regulations accordingly. The company also promoted a Bill in Parliament to obtain further time for the constant supply, which the corporation opposed, and it was ultimately withdrawn. The town council made two orders for the payment out of the borough fund of the expenses of the opposition, before the justices and in Parliament respectively, which were paid, notwithstanding objection that the orders were *ultra vires*. There was no surplus from property of the corporation, and borough rates were made. On a rule for a *certiorari*, to bring up these orders for the purpose of quashing them, it was held, with reference to the expenses of opposing the Bill in Parliament, that the purpose was one which was beyond the scope of municipal government, or anything to be done under the Municipal Corporations Act, and that in a borough without a surplus fund, the borough fund could not be applied to defraying the expense incurred. So also the expense of opposing the regulations was held not to be an expense necessarily incurred in carrying into effect the provisions of the Municipal Corporations Act.

In *Attorney-General* v. *Mayor, &c., of Brecon*, it was held by the Master of the Rolls, that municipal corporations having been reduced by the Municipal Corporations Act, 1835, from the position of owners of property to that of trustees, possess the ordinary right of trustees to defend their trust property and their rights as trustees from attack at the expense of the trust estate; consequently, a municipal corporation has the right, either under the Municipal Corporations Act, or under the general law applicable to trustees to defray, out of the borough fund or rates, the expenses of opposing any attack made by Bill in Parliament, whether against their existence as a corporation, or against their property, or only against their duties, rights, powers or privileges; and that that right is not taken away by the Municipal Corporations (Borough Funds) Act, 1872. But the last-mentioned Act increases the responsibility of corporations who choose to act in opposing Bills in Parliament without obtaining the sanction of the ratepayers, because, if unsuccessful, it will be more difficult for them now than it was formerly, to show that the expenses ought to be allowed, inasmuch as they could have readily obtained the sanction which would have protected them from all consequences of want of success.

With regard to the promotion of a Bill in Parliament by a corporation, see *Attorney-General* v. *Mayor, &c., of Norwich*, 16 Sim. 225; 12 Jur., 424, where an injunction was granted to restrain the corporation from promoting, at the expense of the borough fund, a Bill to enable them to improve the navigation of the river which flows through that city to Yarmouth. See also *Attorney-General* v. *Corporation of Norwich*, 21 L. J. (Ch.) 139. In that case the corporation of the city were authorized to levy certain tonnage dues to be applied in a specified manner, and after such application, the remainder was to be applied to certain purposes, some of which were the same as those to which the surplus of the borough fund were made applicable; and distinct accounts were directed to be kept of the tonnage dues and borough fund. The treasurer mixed the two funds at his bankers. The corporation proposed to obtain an Act of Parliament for improving the river flowing through the city, and applied money from the funds at the bankers in paying certain expenses. An information was filed by the Attorney-General, at the relation of ratepayers, praying an injunction to restrain this application to Parliament, at the expense of the borough fund, and the same was granted.

In *R.* v. *Mayor, &c., of Warwick*, 15 L. J., Q. B. 306; 10 Jur., 962, the expense of repairing the corporation pew in the parish church was held to be a legal charge on the borough fund, the affidavits showing that it had long been the usage for the mayor and several of the members of the corporation to go together in procession to church on Sunday, and that the pew in question had always been lined and repaired by the corporation.

In *Attorney-General* v. *Batley*, 26 L. T., N.S. 392, an injunction was granted restraining the corporation from applying the borough funds to the purchase of a gold chain for the mayor. Wickens, V. C.: The money will have to be raised by a number of small payments contributed by a number of persons of various positions in the social scale, and varying also in their pecuniary means; and it becomes the duty of the court to see that money so contributed is not wantonly spent or wasted.

See also *R.* v. *Mayor, &c., of Warwick*, in note to sec. 133; *Parr* v. *Attorney-General*, and *Attorney-General* v. *Corporation of Lichfield*, in note to sec. 139; *R.* v. *Prest*, and *R.* v. *Mayor, &c., of Norwich*, in note to sec. 141; and *R.* v. *Mayor, &c., of Liverpool*, in note to sec. 143.

With regard to the saving in sub-sec. 4 of this section, see the saving in sec. 131 for lawful debts contracted before the 5 & 6 Will. 4, c. 76.

Orders for Payment of Money.

141.—(1). An order of the council for payment of money out of the borough fund shall be signed by three members of the council, and countersigned by the town clerk.

(2.) Any such order may be removed into the Queen's Bench Division of the High Court by writ of certiorari, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court.

In *R.* v. *Town Council of Lichfield*, L. J., 12 Q. B. 308; 7 Jur., 670, on an application for a *certiorari* to bring up the orders for the payment of certain sums, it was stated that the resolutions of the town council were not orders in writing of the council signed by three or more members, and countersigned by the town clerk of the borough, and that the resolutions entered in the minute book were not orders upon which the treasurer would pay, and that the resolutions could not be removed into the court without tearing the same out of the minute book and destroying or injuring other entries, or without removing the minute book itself, which could not be done without great inconvenience to the corporation. The rule for a *certiorari* was made absolute.

With reference to the corresponding section in the 7 Wm. 4, and 1 Vict., c. 78. Lord Campbell, C. J., in *R.* v. *Prest*, 16 Q. B. 33; 20 L. J., Q. B. 17; 15 Jur., 554, (see note on sec. 20,) observed: "This enactment leaves it to our discretion to decide whether the order complained of is or is not a misapplication. I think that it would not be so, on the mere ground that the payment could not be enforced, and in such a case we must not look at mere technicalities, but must see whether a grievance really exists which the court ought to redress." Where, therefore, money had been *bonâ fide* paid upon an order of the council to a town clerk for professional business done by him as a solicitor, upon instructions given by the corporation, the mere fact of his having had no retainer under the seal of the corporation, was held to be no sufficient ground why the court should quash the order as for a misapplication of the borough fund.

The same principle was acted on in *R.* v. *Mayor, &c., of Norwich*, 30 W. R., 752. In that case it appeared that a resolution was passed by a corporation acting as an urban sanitary authority, ordering the payment of certain sums, each exceeding £50, to contractors, for costs incurred in paving a street, no contracts having been entered into with them under the seal of the corporation, as required by sec. 174 of the Public Health Act. On an application for a *certiorari* to bring up and quash the resolution, on the ground that it was a "misapplication" of the borough fund; it was held that as the work was

useful, and done at a reasonable cost, and there was no suggestion of corruption or partiality, there had been no "misapplication," and the court in its discretion refused to grant the *certiorari*.

For decisions on questions as to the payments which can legally be made out of the borough fund, see notes on secs. 133, 140, and 143.

There is no general rule of practice which requires application for a *certiorari* to be made within six months of the making of the order sought to be quashed. The 13 Geo. 2, c. 18, s. 5 only applies to convictions and other proceedings before justices. *R.* v. *Mayor, &c., of Sheffield*, L. R., 6 Q. B. 652.

As to the costs of *certiorari*, when the court ordered the costs to be paid by the prosecutors, the rule not further stating by whom the costs were to be paid, see *R.* v. *Dunn & Bennett*, 5 Q. B. 959; 13 L. J., Q. B. 237; 8 Jur., 773.

Payments to and by Treasurer.

142.—(1.) All payments to and out of the borough fund shall be made to and by the treasurer.

(2.) All payments to the treasurer shall go to the borough fund.

Application of surplus of Borough Fund.

143.—(1.) If the borough fund is more than sufficient for the purposes to which it is applicable under this Act, or otherwise by law, the surplus thereof shall be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough.

(2.) If the surplus arises from the rents and profits of the property of the municipal corporation, and not from a borough rate, and the borough is a sanitary district under the Public Health Act, 1875, then the municipal corporation, as the sanitary authority for the borough, may apply the surplus in payment of any expenses incurred by them as such sanitary authority, before or after the commencement of this Act, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the Public Health Act, 1875, or any Act thereby repealed.

In *R.* v. *Mayor, &c., of Liverpool*, 28 L. T., 500; 21 W. R., 674, it appeared that during the progress of the Liverpool Tramways Act, 1871, through Parliament, the Liverpool Town Council authorized the town clerk to make terms for the purchase of the tramways, with the company promoting the Bill. Amongst other terms of arrangement he agreed that the corporation should pay the expenses of the Bill if they resolved to take the tramways according to their powers in the Bill. The council consented to these terms, and after the Act was passed resolved to take the tramways; they afterwards resolved to pay the expenses agreed to. The surplus of the borough fund in the year of these resolutions was less than the amount of the expenses, but in the subsequent years the surplus was greater than that amount:—It was held, upon *mandamus*

to the town council to pay these expenses, that there was nothing in the Municipal Corporations Act, to prevent the payment of this claim.

See also *Attorney-General* v. *Mayor, &c., of Wigan* and *Roberts* v. *Mayor of Sheffield*, referred to in notes to sec. 140.

BOROUGH RATE.

Power for Council to make Borough Rate and Assess Contribution thereto.

144.—(1.) If the borough fund is insufficient for the purposes to which it is applicable under this Act or otherwise by law, the council shall from time to time estimate, as correctly as may be, what amount, in addition to the borough fund, will be sufficient for those purposes.[1]

(2.) In order to raise that amount, the council shall, subject to the provisions of this Act, from time to time order a rate, called a borough rate, to be made in the borough.[2]

(3.) A borough rate may be made retrospectively, in order to raise money for the payment of charges and expenses incurred, or which have come in course of payment, at any time within six months before the making of the rate.[3]

(4.) The council shall assess the contributions to the borough rate on the several parishes and parts of parishes in the borough in proportion to the total annual value of the hereditaments in each parish or part which are rateable to the poor, or in respect of which a contribution is made to the poor rate.[4]

(5.) That value shall be estimated according to the valuation list (if any) in force for the time being, and if there is none, according to the last poor rate.[5]

(6.) But if for any reason the council think that the valuation list or poor rate is not a fair criterion of value they may cause an independent valuation to be made.[6]

(7.) For the purpose of assessing a borough rate, or for the purpose of an independent valuation, the council from time to time may cause any of the books of assessment of any rates or taxes, parliamentary or parochial, on any property, and the valuation by which the assessment is made, in the hands of the overseers, to be brought before them, and may take copies thereof or extracts therefrom, or may direct any person to take copies of or extracts from such books being in his hands, without having the same

brought before the council, or may call before them any overseer to give evidence respecting the same; and may cause copies of the total amount assessed in each parish in respect of any tax payable to the Crown, and the total amount of the valuation of the property on which that assessment was made in any past year, to be made out by the clerk to the commissioners of each district.

(8.) The overseers and such persons as they select, by warrant of the council, signed by the mayor and sealed with the corporate seal, may enter on, view, and examine any land chargeable to the borough rate, in order to ascertain the annual value at which it ought to be charged; but no such entry shall in any case be made unless fourteen days previous notice in writing, signed by the mayor and sealed with the corporate seal, of the intention to make the entry, has been given to the overseers and to the persons on whose land the entry is to be made.

(9.) If on any occasion the overseers of a parish think that their parish is aggrieved by a borough rate, on account of the proportions assessed as the contributions of the respective parishes being unequal, or on account of some parish being without sufficient cause omitted, or on account of any other just cause of complaint, they may appeal to the recorder at the next quarter sessions for the borough, or if there is none, to the next quarter sessions for the county wherein the borough is situate, or whereto it is adjacent, against such part of the rate only as affects their parish.[7]

(10.) The recorder or quarter sessions shall hear and finally determine the appeal, and either confirm such parts of the rate as are appealed against, or correct any inequalities, disproportions, or omissions proved to exist therein, as to him or them appears just.[8]

(11.) The expenses of the appeal shall be paid by such parishes or persons and in such proportions as the recorder or court having cognisance of the appeal directs.

(12.) If any person having custody of any book for which the council call under this section, fails to produce it to the council, or to permit any copy thereof or extract therefrom to be made or taken, or to give such evidence as the council require, he shall, on summary conviction, be liable to a fine not exceeding ten pounds.

(13.) If any clerk to the commissioners of a district fails to make any copy, which he is required to make under this

section, within a reasonable time after his receipt of the order to make it, he shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

[1] For provisions as to the receipts to be carried to the borough fund, see secs. 139, 142, 149, and 200; as to the payments with which the borough fund is chargeable, secs. 140 149 and 226 (3); and as to the application of a surplus of the borough fund, sec. 143.

A peremptory writ of *mandamus*, requiring a corporation to enforce payment of the existing borough rates, or to cause to be collected another rate, and out of the same to pay money under a compensation bond, was held to be bad, because it directed payment to be provided in a particular mode, by making or enforcing a borough rate, without showing that the existing borough fund was insufficient; and this objection may be made as an answer to a rule for an attachment against those who have disobeyed the writ. *R.* v. *Mayor, &c., of Poole (or Ledgard)*, 1 G. & D. 728; 1 Q. B. 616; 10 L. J., Q. B. 198.

[2] With reference to the provision in sec. 92 of the 5 & 6 Wm. 4, c. 76 (for which this enactment is substituted), that for the purpose of raising the amount estimated, the council shall order a borough rate in the nature of a county rate, and for that purpose shall, except as in that section mentioned, have within their borough all the powers of justices of the peace assembled at quarter sessions by virtue of the 55 Geo. 3, c. 51, it was held in *Jones* v. *Johnson and Morgan*, 7 Exch., 452; 16 Jur., 840; 21 L. J., M. C. 102, that as the town council were not a court, and were not bound to sit with open doors, a borough rate was not bad, merely because it was made at a meeting at which members of the council and reporters for the press only were allowed to be present.

It will be observed from sec. 165 that the recorder of a borough, by virtue of his office, has no power to allow, apportion, make, or levy any borough rate, or subject to the provisions of this Act respecting appeals from a rate, to do any act in relation to the allowance, apportionment, making, or levying of any rate whatsoever.

Nothing in this Act is to authorize the levy of any rate within the precincts of the Universities of Oxford and Cambridge, or any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act. Sec. 257 (5).

[3] In *Jones* v. *Johnson and Morgan*, 7 Exch., 452; 16 Jur., 840; 21 L. J., M. C. 102; affirming 5 Exch, 862; 20 L. J., M C. 11; it appeared that the town council, previously to making a borough rate on the 19th July, 1847, made an estimate which contained, amongst others, the two following items:—"Compensation to the late town clerk, three years and a half, £105 14*s.* 10*d.*" "Law expenses, £800." With regard to the first sum of £105 14*s.* 10*d.* the circumstances under which it was introduced were these: S. had been town clerk of the borough at the passing of the Municipal Corporations Act, 1835, and so continued until the year 1844, when he was dismissed by the town council. He then claimed compensation, and the town council having refused to recognize the claim, he obtained a writ of *mandamus*, the return to which he traversed. The litigation resulted in a judgment, whereby S. recovered against the council £467 for damages and costs. In April, 1846 a peremptory *mandamus* issued, and in June, 1846, the council awarded him an annuity of £30 4*s.* 3*d.* He then appealed to the Treasury, and the appeal was pending at the date of the meeting at which the borough rate was made. The sum of £105 14*s.* 10*d.*, the arrears of the annuity, was included in the estimate on the ground that the council might be required to pay that sum to S. With regard to the item of £800, it appeared that after S. had recovered judgment as stated, E, the town clerk, who had been the attorney for the town council in the litigation, with the view of avoiding an execution, paid to S. out of his (E's) own moneys, the £467 for damages and costs, intending to charge the same as a disbursement in his bill of costs, but when the borough rate was made he

had not delivered any signed bill. The item of £800 was introduced as a sum which, it was estimated by the town council, would be required to pay E's bill of costs and disbursements for that and other suits, and business pending and then unascertained, including, as a disbursement, the sum of £407 paid to S. It was held that the rate was prospective, for it was made *pro rata* and for the purpose of providing for sums which it was expected would become payable thereafter, and further, that the rate, upon the face of it, was perfectly good and that although a rate be in fact made for bygone expenses, it is not a bad rate, as against justices who issue a warrant of distress for the non-payment, unless it be clear on the face of it that it was meant to include bygone expenses.

It is to be observed that charges and expenses incurred, or which have come in course of payment at any time within six months before the making of the rate are not to be deemed "bygone expenses."

[4] With regard to the contributions "in aid of the poor rate," which are made in respect of government property used for public purposes, when such property is not rated, out of the parliamentary grant for that purpose, the Union Assessment Committee Act, 1862 (25 & 26 Vict., c. 103), by section 30, provides as follows:—"In case any parish comprised in any union shall receive any sum of money as a contribution in aid of the poor rate of such parish, for or in respect of government property within such parish and used for public purposes, the annual value of such property, according to the estimate (if any) of such value on which the amount of the sum of money so received is computed, or, if there be no such estimate, then the annual value of such property, estimated in the mode provided by the Act 6 & 7 Wm. 4, c. 96, for making an estimate of the annual rateable value of property liable to be rated to rates for the relief of the poor, shall be included by the overseer or overseers in the valuation list of such parish." In some cases property occupied by the government for public purposes is actually rated, as, for instance, lands held by the Secretary of State for War under the Defence Act, 23 & 24 Vict., c. 112, when such lands were previously liable and charged with poor rates.

[5] For provisions as to valuation lists, see Union Assessment Committee Acts (25 & 26 Vict., c. 103; and 27 & 28 Vict., c. 39), the Poor Law Amendment Act, 1868 (31 & 32 Vict., c. 122); and the Union Assessment Act, 1880 (43 & 44 Vict., c. 7).

[6] For the purpose of arriving at the "annual value" *i.e.* the "net annual value" of the hereditaments, when an independent valuation is made, the principles applicable to assessments for the purposes of the poor rate should be followed. "Rateable value" or "net annual value" is the "gross estimated rental" of the hereditaments after "deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent" (6 & 7 Wm. 4, c. 96, s. 1).

"Gross estimated rental" is defined by the Union Assessment Committee Act, 1862 (sec. 15), as the "rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any." In 1859 the law officers of the Crown advised that "gross estimated rental" was the rent at which the property might be expected to let, free of tenant's rates and taxes, and tithe commutation rent-charge, the tenant taking these burdens upon himself.

[7] The power of appealing against the borough rate appears to be limited to the overseers of the parish. But under the 5 & 6 Wm. 4, c. 76, s. 92, there was no right of appeal on the part of persons aggrieved as individuals in consequence of unequal or disproportionate impositions in a parish, the power of appeal being intended to apply to the grievances and complaints of the whole parish. See *R.* v. *Recorder of Bath*, 9 A. & E. 871; 1 P. & D. 622; 8 L. J., M. C. 96.

[8] In *R.* v. *Recorder of Stamford*, 2 Jur., 965, it appeared that an appeal having been lodged at the Epiphany Sessions, 1837, was, at the request of the town clerk, postponed to the Michaelmas Sessions, 1837. In the meantime the rate was, on account of its illegality, abandoned, and the respondent did not

appear at the Michaelmas Sessions. Notice to produce the rate had been given, but neither the rate nor any secondary evidence of it was produced. The Recorder refused to hear the appeal, on the ground that there was no proof that the rate appealed against ever existed. It was held that the court were in possession of the appeal and ought to have heard it.

In *R.* v. *Justices of Ripon*, 7 A. & E. 417, it was held that sec. 132 of the 5 & 6 Wm. 4, c. 76, which was similar in terms to sec. 233 of this Act, took away *certiorari* in the case of an order of the quarter sessions of the borough quashing an appeal against a borough rate.

Collection of Borough Rate in Undivided Parish.

145.—(1.) Where a parish is wholly in a borough, the council may from time to time, if they think fit, order the overseers to pay the contribution of the parish to the borough rate out of the poor rate made or to be made for the parish.

(2.) The overseers shall pay the contribution to the council or as they order.

(3.) If the overseers fail to pay as ordered, the amount may be levied off the goods of them or any of them, by distress, by virtue of a warrant signed by the mayor and sealed with the corporate seal, or signed by two justices in and for the borough.

In the memorandum which prefaced the Bill as brought in, it was stated that "the terms of clauses 145 and 146 relating to the collection of borough rates, have been modified so as to harmonize better with the general law of rating in its present form."

As to the warrant for the levy or collection of a borough rate, see sec. 148.

When the poor rate is the rate out of which the sum required by the order of the council is to be paid in the case of a parish which is wholly in a borough, the collector of poor rates of the parish, or the assistant overseer, if his duty includes the collection of the poor rates, is bound to collect the rate, and will not be entitled to claim any remuneration beyond his salary for the service.

The proportion of the poor rate levied which is required to meet the order of the council in respect of the borough rate under this section should be set out in the demand notes delivered to the ratepayers.

As to the rating of owners instead of the occupiers in certain cases, see sec. 147.

With regard to the collection of the borough rate in a parish which is partly in and partly out of a borough, see sec. 146.

The remedy of a town council for enforcing payment of a borough rate, is that provided by sub-section 3 of this section, and not by a *mandamus* to the overseers. See *R.* v. *Overseers of Hunslet*, 1 E. & E. 775; 28 L. J., M. C. 180; 7 W. R., 411.

As to levy of distress on goods of overseers after they have ceased to hold office, see *Jones* v. *Johnson and Morgan*, 7 Exch. 452; 16 Jur., 840; 21 L. J., M. C. 102.

As regards "the right of the council of a borough to collect by their own officers the borough rate, when at the commencement of this Act they are authorized by law to collect, and are collecting the same," see sec. 250.

Collection of Borough Rate in Divided Parish.

146.—(1.) Where a parish is partly in and partly out of a borough, the overseers, on receipt of an order for payment of money for the contribution of the part in the borough towards a borough rate, which order the council may make as if the whole parish was in the borough, shall assess on and levy from the occupiers of hereditaments rateable to the poor rate in that part of the parish the amount necessary for the contribution, either as a separate rate, for which the overseers shall have all the powers which belong to them for levying a poor rate, or with and as part of the poor rate to which occupiers in that part of the parish are liable in common with occupiers in the other part.[1]

(2.) Any person rated under this section may appeal against the rate in like manner and with the like consequences, and subject to the like provisions and regulations, as in appeals against a poor rate.[2]

(3.) The overseers shall pay the amount of the contribution to the council, or as they order, and in default thereof shall be subject to all provisions and penalties provided by law concerning non-payment of contribution to a borough rate.[3]

(4.) Every overseer and collector shall account for the money collected and expended under this section to the auditor of the district comprising the parish in the like manner, and with the like incidents, consequences, liabilities, and power of appeal as in the case of the poor rate; and the Local Government Board shall have the like power to make orders to regulate the mode of accounting as they have in regard to other local rates.[4]

(5.) If any balance is found in the hands of any such overseer or collector he shall apply it towards the next rate required under this section, or pay it to his successor in office.

(6.) In default of his so applying it while in office, or making payment to his successor within seven days after the balance is found, the auditor shall proceed to recover it.[5]

(7.) The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect the rate under this section, and shall receive thereout such remuneration for the additional duty as the overseers, with the consent of the vestry, determine.

(8.) The collector or other person appointed shall, for the purposes of this section, have all the powers of overseers.

(9.) The overseers, in estimating the amount of their assessment under this section, may include a sum for costs of assessment and collection, and a reasonable sum for rates excused or irrecoverable.

[1] In the memorandum which prefaced the Bill as brought in, it was stated that "the terms of clauses 145 and 146 relating to the collection of borough rates have been modified, so as to harmonize better with the law of rating in its present form."

This section, it will be observed, refers only to the collection of the borough rate in a parish which is partly in and partly out of a borough, the case of an undivided parish being provided for by sec. 145.

As regards "the right of the council of a borough to collect by their own officers the borough rate, where at the commencement of this Act they are authorized by law to so collect and are collecting the same," see sec. 250.

As to the warrant for the levy or collection of a poor rate, see sec. 148.

[2] As to appeals against poor rates, any person who deems himself aggrieved by any poor rate, or has any material objection to any person being put on or left out of the rate, or to the sum charged on any person in the rate, or has any other material objection to the rate, or any part of it, or shall deem himself aggrieved by any neglect, act, or thing done or omitted by the overseers or the justices, may, under the 17 Geo. 2, c. 38, s. 4, and the 12 & 13 Vict., c. 45, s. 1, appeal to the next general or quarter sessions. Notice in writing of the appeal, and the particular causes or grounds of the appeal, must be given to the churchwardens and overseers, or any two of them. With the consent, however, of the overseers, signified in open court, and with the consent of any other person interested therein, the court of sessions may proceed to hear and decide upon the appeal, although no notice may have been given in writing; and with the like consent the court may hear and decide upon grounds of appeal not stated, or misstated in the written notice, where notice has been given in writing (41 Geo. 3, c. 23).

With reference to the term "next sessions," it was held in *R.* v. *Justices of Surrey*, L. R. 6 Q. B. D. 100; 29 W. R. 261; 50 L. J., M. C. 10; 43 L. T., N.S. 500, that it is not necessary to enter the appeal at the next sessions if there is not sufficient time for the giving of the notices before the commencement of the sessions; and that the "next sessions" must be construed as meaning the next sessions at which a proper trial can be had, and for which proper notices can be given. Further, the appellant is entitled, before he enters his appeal or gives his notice to have some fair reasonable time to consider his position and make up his mind whether he will take the first step towards appealing by giving the necessary notices and to consider the grounds on which the appeal is to be based, which grounds are to be specified in the notice.

There may also, in the case of a poor rate, be an appeal to the special sessions, under the 6 & 7 Wm. 4, c. 96, on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included in the rate. The justices in special sessions are not, however, authorized to inquire into the liability of any hereditament to be rated, but only into the true value thereof, and into the fairness of the amount at which the same has been rated. Notice in writing of the objection to the rate must be given to the collector, overseers, or other persons by whom the rate was made.

No person, however, is empowered to appeal to any sessions against a poor rate made in conformity with the valuation list approved by the assessment committee, unless he has given to the assessment committee notice of objection against the list, and has failed to obtain such relief in the matter as he deems just (27 & 28 Vict., c. 39, s. 1).

Before any appeal is heard by any special or quarter sessions against a poor rate for any parish comprised in a union, the appellant is to give to the assessment committee of the union twenty-one days' notice in writing, previous to the sessions to which the appeal is to be made, of the intention to appeal and the grounds of the appeal.

When the overseers receive notice of appeal to the general or quarter sessions against a poor rate, they are not to collect from the person giving such notice more than the sums at which he was assessed in the last effective rate, until the appeal has been heard or determined (41 Geo. 3, c. 23, s. 2). The rate as altered by the quarter sessions, or so much of the rate as has not been already paid, will be recoverable by the overseers (sec. 7). When a rate is appealed against, it is not necessary to discontinue the collection; and even if the rate is quashed, the rate is to be collected, and the sums so collected are to be deemed payments on account of the next effective rate for the parish (s. 1).

[3] As to the levy of a distress on the goods of overseers for non-payment of a borough rate, see sec. 145 (3.)

[4] As the moneys collected and expended under this section are to be accounted for to the auditor of the district comprising the parish, in the like manner and with the like incidents, consequences, liabilities, &c., as in the case of the poor rate, the auditor will have the same powers and duties as in the case of overseers and collectors with regard to accounts relating to the poor rate.

With regard to the latter accounts, the 7 & 8 Vict., c. 101, s. 32, provides that the auditor shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to moneys assessed for and applicable to the relief of the poor of all parishes and unions within his district and to all other moneys applicable to such relief, and that such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any moneys . . . found by him to be due from any person.

By the 11 & 12 Vict., c. 91, s. 8, it is enacted "that if any auditor shall see cause to surcharge any person now liable by law to be surcharged by him, and to whom no notice is now required by law to be given, with any sum of money in reference to any payment considered by him to have been illegally or improperly made, he shall, if the person be not present at such audit, cause notice in writing of his intention to make such surcharge to be given, by post or otherwise, to the person against whom he shall propose to make the surcharge, addressed to him at his last known place of abode, and shall adjourn the audit, so far as it shall relate to such particular matter, for a sufficient time to allow of such person appearing before him and showing cause against such surcharge, and at such time the said auditor shall hear the party if present, and determine according to the law and justice of the case."

Where any officer is continuing in office at the time when the accounts are audited, the auditor is to certify as due such sums of money only as are disallowed or surcharged by him in the accounts so audited; but where the term of office of the officer has expired at the time when the accounts are audited, the auditor is to ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums, if any, which he shall have disallowed or surcharged, and is to give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding officer, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit (11 & 12 Vict., c. 91, s. 5).

With regard to an appeal against the decision of the auditor, see 7 & 8 Vict., c. 101, s. 35. Any person aggrieved by any allowance, or by any disallowance, or surcharge by any auditor, if he have first paid or delivered over to any person authorized to receive the same, all such money, goods, and chattels as are admitted by his accounts to be due from him or remaining in his hands, may apply to the High Court of Justice for a *certiorari* to remove

into that court the allowance, disallowance, or surcharge. If it appear to the court that the decision of the auditor was erroneous, they are by rule of the court to order such sum of money as may have been improperly allowed, disallowed, or surcharged, to be paid to the party entitled thereto by the party who ought to repay the same. The court may also, if they see fit, order the costs of the person prosecuting the *certiorari* to be paid by the parish or union to which such accounts relate, as to the court may seem fit.

There may, however, be an appeal to the Local Government Board instead of to the High Court of Justice. The Local Government Board are empowered to decide an appeal *according to the merits of the case;* and if they find that any disallowance or surcharge has been lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may direct that the same shall be remitted upon payment of the costs, if any, which have been incurred by the auditor, or other competent authority, in the enforcing of the disallowance or surcharge (11 & 12 Vict., c. 91, s. 4). As the Local Government Board are empowered not only to decide upon the lawfulness of the decision of the auditor, but to exercise an equitable jurisdiction, the cases of appeals to the High Court of Justice under sec. 35 of the 7 & 8 Vict., c. 101, are very exceptional.

If persons who have been surcharged by the auditor fail to avail themselves of their remedy by appeal either to the High Court of Justice or the Local Government Board, they cannot afterwards, when summoned before a magistrate for the recovery of the amount, set up any objection to the surcharge. If the magistrate in such case refuse to act, the High Court of Justice will compel him to do so. *R.* v. *Finnis*, 28 L. J., M. C. 201; 5 Jur., N.S. 971.

With regard to proceedings for failure to attend the audit, or to produce the proper accounts or vouchers, sec. 33 of the 7 & 8 Vict., c. 101, provides that it shall be lawful for the auditor "to require any person holding or accountable for any money, books, deeds, papers, goods, or chattels, relating to the poor rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings . . . . or if he wilfully make or sign a false declaration in respect of such accounts, he shall be liable to the penalties of perjury." See also 12 & 13 Vict., c. 103, ss. 10, 11.

[5] With respect to the powers as regards the recovery of moneys, goods, &c., certified by an auditor at an audit of the poor rate accounts, see sec. 32 of the 7 & 8 Vict., c. 101. If any moneys certified by the auditor to be due from any person, be not duly paid within seven days of the same being certified, the auditor is to proceed, as soon as may be, to enforce the payment of the same. All moneys so certified to be due by the auditor are recoverable as so certified from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for the moneys, and shall be recovered on the application of the auditor or of any person for the time being entitled or authorized to recover the same, in the same manner as penalties and forfeitures under the provisions of the 4 & 5 Wm. 4, c. 76, ss. 91, 101. See also 11 & 12 Vict., c. 91, s. 9; and 12 & 13 Vict., c. 103, ss. 9 and 10.

Rating of Owners instead of Occupiers for Borough Rate in certain Cases.

147. Where the vestry of a parish has made or makes, before or after the commencement of this Act, under section

four of The Poor Rate Assessment and Collection Act, 1869, an order, as in that section provided, to the effect that the owners, instead of the occupiers, of such rateable hereditaments, as therein mentioned, shall be rated to the poor rate in respect thereof, every such order, while in force after the commencement of this Act, shall be deemed to apply to and include rating to the borough rate, with the same incidents, conditions, powers, liabilities, and remedies as if the borough rate were a poor rate.

Section 4 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict., c. 41) is as follows:—"The vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section three of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order; and thereupon and so long as such order shall be in force, the following enactments shall have effect:—(1.) The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate: (2.) If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow to him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated: (3.) The vestry may, by resolution, rescind any such order after a day to be fixed by them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect: Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included."

This section of the Poor Rate Assessment and Collection Act, it will be observed, empowers the vestry to make the order as regards all rateable hereditaments to which sec. 3 of the Act extends, with the proviso that the clause shall not be applicable to any rateable hereditaments in which a dwelling house shall not be included. Sec. 3 applies to any rateable hereditament, the rateable value of which does not exceed "twenty pounds, if the hereditament is situate in the metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere."

As to the incidents, conditions, &c., of an order of vestry under sec. 4 of the Act referred to for the rating of owners instead of occupiers in the case of a poor rate, see "Owen's Poor Rate Assessment and Collection Acts" (seventh edition), Knight & Co., 90 Fleet Street, London.

Warrants for Levy of Borough Rate.

148. Any warrant required for the levy or collection of a borough rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

Borough Rate to go to Borough Fund; and its Application.

149. All sums levied in pursuance of the borough rate shall go to the borough fund; and, subject to the foregoing provisions of this Part, the same shall be applied to all purposes to which the borough fund is applicable under this Act, or otherwise by law; and, as regards a borough named in the schedules to the Municipal Corporations Act, 1835, to all purposes to which, before the passing of that Act, a borough rate was by law applicable in the borough, or a county rate was applicable in a county.

As to the provisions of this Part with regard to payments out of the borough fund, see sec. 140.

COUNTY RATE.

General Exemption of Quarter Sessions Boroughs from County Rate.

150.—(1.) Where a borough has a separate court of quarter sessions, the justices of a county wherein the borough or any part thereof is situate shall not assess any hereditaments in the borough to any county rate; and, except as is expressly by this Act provided, every part of the borough shall be wholly free from contributing to any rate or assessment of any kind of and for that county.

(2.) But nothing in this section shall prevent the levy or collection of arrears of any county rate made before the grant of a separate court of quarter sessions.

As to the exceptions referred to in sub-section 1, see secs. 151 and 152.

A borough having a separate court of quarter sessions appears to be liable as part of the hundred to contribute towards the "hundred rate" for compensating for damage feloniously committed by persons riotously and tumultuously assembled together. *Birley* v. *Inhabitants of Hundred of Salford*, 11 M. & W. 391; 12 L. J., Ex. 361.

Liability of Quarter Sessions Borough for Prosecution Expenses of County.

151. The municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay such sums, if any, as are expended out of the county rate of the county in which the borough is situate, and as are not otherwise paid or chargeable, in respect of the costs arising out of the prosecution, maintenance, conveyance,

transport, or punishment of all offenders committed for trial from the borough to the assizes for the county.

The expenses of conveying to prison persons who are committed to prison, either for punishment or to take their trial, and are unable to pay these expenses, are "expenses incurred in respect of the maintenance of prisoners," within secs. 4 and 57 of the Prisons Act, 1877 (40 & 41 Vict., c. 21), and those sections transfer the liability for such expenses from the county rates to moneys provided by Parliament. *Mullins* v. *Treasurer of County of Surrey*, L. R., 7 Ap. Ca. 1; 51 L. J., H. L. 145; 45 L. T., N.S. 625; 30 W. R., 157.

The expense of providing a prisoner sentenced to be detained, after a term of imprisonment, in a reformatory school, with clothing suitable for his admission to the school, is also an expense incurred for the "maintenance of a prisoner," within sec. 4 of the Prisons Act, 1877, and to be borne in like manner. *The Prison Commissioners* v. *Corporation of Liverpool*, L. R., 5 Q. B. D. (C. A.) 332; 49 L. J., Q. B. D. (C. A.) 431; 42 L. T., N.S. 839; 29 W. R. 6.

The liability for the maintenance of insane prisoners whose settlement is unknown is imposed by 3 & 4 Vict., c. 54, upon the county in which they are confined, and this statute is not affected by the Prisons Act, 1877. *R.* v. *Mews*, L. R. 6 Q. B. D. (C. A.) 47; 50 L. J., M. C. 4; 43 L. T., N.S. 403; 29 W. R. 66.

Liability of certain Quarter Sessions Boroughs to other County Expenses.

152.—(1.) If the whole or any part of the area for the time being comprised in a borough having a separate court of quarter sessions was, before the eleventh of July one thousand eight hundred and thirty-two, chargeable with or liable to contribute to the county rate of the county in which it is situate, the municipal corporation shall, in addition to its liability to pay for the purposes mentioned in the last foregoing section, continue liable to contribute to the county rate for other purposes (in this Act referred to as general county purposes), as if this Act had not been passed.[1]

(2.) General county purposes shall not include the costs arising out of coroners' inquests, or the expenses incurred under the Sale of Food and Drugs Act, 1875, in respect of the county, or, in the case of a borough having its own inspector of weights and measures, the expenses relating to the inspection of weights and measures for the county, or payments to or in respect of special constables.[2]

[1] The expression "the whole or any part of the area for the time being comprised in a borough" is in accordance with the decision in *R.* v. *Monck and Another*, L. R., 2 Q. B. D. 544; 46 L. J., M. C. 251; 36 L. T., N.S. 720, affirming *R.* v. *New Windsor*, L. R., 1 Q. B. D. 152; 45 L. J., M. C. 50; 34 L. T., N.S., 172. In that case it appeared that the borough of New Windsor had a separate court of quarter sessions. On the 11th July, 1832, the date of

the passing of the Boundaries Act (2 & 3 Wm. 4, c. 64), a part of the parish of Clewer, which had previously formed part of the county of Berks, was added to the borough for the purposes of parliamentary representation. Then, by the operation of the Municipal Corporations Act, the portions of the boroughs, as constituted by the Reform Act for parliamentary purposes, became portions of the boroughs for municipal purposes, and consequently the Clewer portion of Berks became a portion of New Windsor for municipal as well as parliamentary purposes. Before the passing of the Boundaries Act, the Clewer portion of Berkshire contributed to the county rate, but the borough of New Windsor, as a borough, did not before the passing of that Act "in whole or in part contribute to the county." The question whether the borough came within the provision in sec. 117 of the Municipal Corporations Act, on which this clause is based, depended on whether the section was to be construed as applying only to a borough, which as a borough in whole or in part contributed to the county rate, or as applying to a borough the whole or part of the area of which contributed to the county rate before the passing of the Boundaries Act. It was held that the borough was liable to contribute to the county "for other purposes" in respect of the part of the parish of Clewer which, before the 11th of July, 1832, was chargeable with county rate.

See also *Guardians of Birmingham* v. *Beaumont* (or *Bacchus*), 27 L. J., M. C. 181; 4 Jur., N.S. 686; 30 L. T., N.S. 270; 29 L. J., M. C. 56; 6 Jur., N.S. 218; 33 L. T., N.S. 318, with reference to the effect of 18 & 19 Vict., c. 105, s. 14 (now repealed), as to the maintenance of lunatics whose settlement could not be ascertained, and who were sent to an asylum from a borough having a separate court of quarter sessions.

[2] A borough having a separate court of quarter sessions under this Act is also by sec. 13 of the Highways and Locomotives Amendment Act 1878 (41 & 42 Vict., c. 77), exempted from contributing towards the charges on the county in respect of disturnpiked and main roads.

Mode of accounting by Borough to County.

153.—(1.) The treasurer of each county shall, not more than twice in every year, send to the council of each borough situate in the county and having a separate court of quarter sessions an account showing separately—

(*a.*) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county;[1] and

(*b.*) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for general county purposes, and all sums received in aid or on account of the county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received;[2]

and shall make an order on the council for the payment of

the sum appearing by this account to be due from the municipal corporation of the borough.

(2.) The council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund.

(3.) If the order is not complied with, two justices for the county may, on the complaint of the treasurer of the county, made within one month after the issue of the order, issue and send to the treasurer of the borough a warrant requiring him to pay to the treasurer of the county, besides the sum mentioned in the order, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned in the order; and until payment thereof the treasurer of the county shall have, in respect of the warrant, all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges.[3]

(4.) If any difference arises concerning the account, it shall be decided by the arbitration of a barrister, named, on the application either of the treasurer of the county or of the treasurer of the borough, by the Secretary of State. The arbitrator may, if he thinks fit, adjourn the hearing from time to time, and may require all such information to be afforded by either party as he thinks fit. He shall by his award in writing determine the amount to be paid by the council to the treasurer of the county, and his award shall be final and conclusive. He shall also assess the costs of the arbitration and determine by whom and out of what fund they shall be paid.

[1] See provisions in sec 151 as to these expenses.

[2] As to the contributions for general county purposes, see sec. 152.

[3] With regard to the remedy in the case of an overseer, petty constable, peace officer, or other person empowered in any place to rate and levy the moneys assessed as county rate, who refuses or makes default, or neglects to pay to the treasurer of the county within the time limited the sums specified in the warrant, sec. 28 of the 15 & 16 Vict., c. 81, provides that if the clerk of the peace or treasurer of the county makes complaint thereof, then any justice of the peace for the county may by warrant under his hand levy the same by distress and sale of the goods of the offender.

PART VIII.

ADMINISTRATION OF JUSTICE.

COUNTY JUSTICES.

Jurisdiction of County Justices in Borough.

154.—(1.) Where a borough has not a separate court of quarter sessions, the justices of the county in which the borough is situate shall exercise the jurisdiction of justices in and for the borough as fully as they can or ought in and for the county.[1]

(2.) No part of a borough having a separate court of quarter sessions shall be within the jurisdiction, exerciseable out of quarter sessions, of the justices of a county, where the borough was exempt therefrom before the passing of the Municipal Corporations Act, 1835.[2]

[1] With reference to sec. 111 of the 5 & 6 Wm. 4, c. 76, on which this section is based, Patteson, J., in *R.* v. *Deane*, 2 Q. B. 96, said: Certain powers are limited by the Act to such boroughs as have a grant of quarter sessions, but as the non-intromittant clauses still remained in the charters of boroughs which had not such a grant, it was necessary that a power should be given to the county justices to act in such boroughs, and this is done by sec. 111, the effect of which is that where there is no grant of a separate quarter sessions, the justices of the county shall have jurisdiction, although the borough charter may contain a non-intromittant clause. See also *R.* v. *Amos*, 2 B. & A. 533, and *Mayor of Reigate* v. *Hart*, L. R. 3 Q. B. 248; 37 L. J., M. C. 70; 16 W. R. 896.

Where in the case of a borough in which the justices of the county had jurisdiction, the borough having no separate commission of the peace, two justices of the county made an order on a railway company, under sec. 58 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict., c. 20), to repair highways within the borough, the order describing the justices as justices "in and for the said borough" of W., it was held that the description of the justices was sufficient. *Local Board of Wakefield* v. *The West Riding and Grimsby Railway Company*, 6 B. & S. 794; 35 L. J., M. C. 69; 12 Jur., N.S. 936. See also *R.* v. *St. Maurice*, 16 Q. B. 908, from which it appears that where an Act of Parliament gives jurisdiction to justices of a county and an order is made under it by justices of a county of a city, which county and city are co-extensive by statute, the order is valid though the justices describe themselves merely as "justices in and for the said city."

[2] The words "exerciseable out of quarter sessions," in sub-section 2 of this section were not in sec. 111 of the 5 & 6 Wm. 4, c. 76, for which this section is substituted. The introduction of these words is in accordance with the decision in *R.* v. *Deane*, 2 Q. B. 96, in which it was held that the appeal under 9 Geo. 4, c. 61, s. 27, against the refusal of justices of a borough having a separate court of quarter sessions to grant an alehouse licence was to the county quarter sessions.

BOROUGH JUSTICES.

Mayor and Last Mayor to be Borough Justices.

155.—(1.) The mayor shall, by virtue of his office, be a justice for the borough, and shall, unless disqualified to be mayor, continue to be such a justice during the year next after he ceases to be mayor.

(2.) The mayor shall have precedence over all other justices acting in and for the borough, and be entitled to take the chair at all meetings of justices held in the borough at which he is present by virtue of his office of mayor; except that he shall not by virtue of this section have precedence over the justices acting in and for the county in which the borough or any part thereof is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice.

With regard to the provision that the mayor shall be a justice of the peace, see sec. 157, sub-section 2, and note to sec. 239, as to the oaths and declaration to be taken by a justice.

As to the precedence of the mayor, see also sec. 15 (5). The mayors of Oxford and Cambridge are not entitled under the Act to any precedence over the vice-chancellors of the Universities. Sec. 257.

Separate Commission of Peace.

156. It shall be lawful for the Queen, on the petition of the council of a borough, to grant to the borough a separate commission of the peace.

As to the qualifications and jurisdiction of borough justices, see secs. 157 and 158.

The grant to a borough of a separate commission of the peace, or of a separate court of quarter sessions, is not to be prejudicially affected by any subsequent grant to or for any county of a commission of the peace or other commission. Sec. 187.

Nothing in this Act is to affect the right of any borough named in Schedule A to the Municipal Corporations Act, 1835, to have a separate commission of the peace. Sec. 250 (5).

Qualification of Borough Justice.

157.—(1.) It shall be lawful for the Queen, from time to time, to assign to any persons Her Majesty's commission to act as justices in and for each borough having a separate commission of the peace.[1]

(2.) A justice for a borough shall not be capable of acting as such until he has taken the oaths required to be taken by justices, except the oath as to qualification by estate, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.[2]

(3.) He must, while acting as such, reside in or within seven miles of the borough, or occupy a house, warehouse, or other property in the borough.[3]

(3.) He need not be a burgess or have such qualification by estate as is required for a justice of a county.

[1] As to the jurisdiction of borough justices, see sec. 158.

Although solicitors are by the 34 Vict., c. 38, disqualified for being justices of the peace for a county in which they practise, there is no similar disqualification with regard to borough justices. A sheriff cannot act as a justice during the year of his shrievalty, see 1 Mar., Sess. 2, c. 8, s. 2; and *ex parte Colville*, L. R., 1 Q. B. D. 133; 45 L. J., Q. B. 133; 24 W. R., 156. From *Davies* v. *Justices of Pembrokeshire*, L. R., 7 Q. B. D. 513; it appears that a justice of the peace does not become disqualified for acting as such by reason of his being elected coroner for the county or division for which he acts as a justice.

[2] By sec. 6 of the Promissory Oaths Act, 1868 (31 & 32 Vict., c. 72), justices of the peace for counties and boroughs are required to take the oath of allegiance and judicial oath. The oath of allegiance is to be in the following form:—"I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God." The judicial oath is to be in the following form:—"I, , do swear that I will well and truly serve our Sovereign, Lady Queen Victoria, in the office of , and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. So help me God." Any person, however, for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath, may, instead of taking such oath, make a solemn affirmation in the form of the oath appointed, substituting the words, "solemnly, sincerely and truly declare and affirm" for the word "swear," and omitting the words, "So help me God." With regard to affirmations by Quakers, Moravians, and Separatists, see note to sec. 36 (3), p. 43. The 34 & 35 Vict., c. 48, which by sec. 2 defines the manner in which the oath of allegiance and judicial oath are to be taken by the officers mentioned in the Promissory Oaths Act, 1868, provides that "each such officer shall take the said oaths before such persons as Her Majesty may from time to time appoint, or in England before the Lord High Chancellor of Great Britain, or in the Court of Chancery, Queen's Bench, Common Pleas, or Exchequer in open court before one or more of the judges of such court, or in open court at the general or quarter sessions of the peace for the county, borough, or place in which the person taking the oaths acts as justice."

See also sec. 239 of this Act as to declarations and oaths.

As to the declaration to be made by a borough justice, see Form B. in Part I. of the Eighth Schedule, p. 233.

[3] The distance of seven miles is to be measured as provided by sec. 231.

Jurisdiction of Borough Justices.

158.—(1.) A justice for a borough shall, with respect to offences committed and matters arising within the borough,

have the same jurisdiction and authority as a justice for a county has under any local or general Act with respect to offences committed and matters arising within the county; except that he shall not, by virtue of his being a justice for the borough, act as a justice at any court of gaol delivery or quarter sessions, or in making or levying any county or borough rate.[1]

(2.) A justice shall not be disabled from acting in the execution of this Act by reason of his being liable to the borough rate.[2]

[1] As to the granting of licences, under 9 Geo. 4, c. 61, to keepers of inns, &c., in boroughs with a separate commission of the peace, see sec. 246.

Where a local Act authorized a paving rate for the parish of Bathwick, the payment of which was to be enforced by the distress warrant of a justice of the county, it was held, that on Bathwick becoming part of the city of Bath, the city having a separate court of quarter sessions and the charter containing a non-intromittant clause, the jurisdiction as regards the enforcement of the rate under the local Act, was transferred to the justices of the borough. *Re Bathwick Paving Act*, 18 L. J., Q. B. 301.

[2] The Justices of the Peace Act, 1867 (30 & 31 Vict., c. 115), by sec. 2, further enacts that "a justice of the peace shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners, or trustees, or any other local authority, by reason only of his being as one of several rate-payers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund, to the account of which the penalty payable in respect of such offence is directed to be carried or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go."

In *R.* v. *Pettitmangin*, 4 B. & S. 921; 33 L. J., M. C. 99; 9 L. T., N.S. 683, it was held that a magistrate of a municipal borough of the watch committee of which he was a member, was not thereby disqualified for adjudicating upon an information laid by the inspector of police in pursuance of instructions of the watch committee, although the fine imposed in the case might go to the borough fund. Cockburn, C. J.: This is not such an interest as disqualifies; it is an interest too remote.

There are, however, several recent decisions with reference to justices, who are members of a local authority, acting in matters in which the local authority are interested, to which it may be convenient to refer.

In *R.* v. *Millege and others, Justices of Weymouth*, L. R., 4 Q. B. D. 332; 48 L. J., M. C. 139; 40 L. T., N.S. 748; 27 W. R., 659; where it appeared that three members of the town council, who were justices of the borough, sat on the bench at the hearing of a summons taken out under the Public Health Act, 1875, although they had been present at the meeting at which the directions to prosecute were given, and had been parties to the resolution on the subject, the order made by the justices was quashed on the ground that they were prosecutors, and could not, therefore, act as judges in the case. In the course of the argument, however, Cockburn, C. J., observed that if the justices had not taken part in determining the prosecution they would not have been disqualified.

In *R.* v. *Lee and others* (L. R., 9 Q. B. D. 394) also, where the sanitary committee of the town council, who were the local authority under the Public Health Act, 1875, passed a resolution directing the town clerk to institute a prosecution against S. for exposure for sale of meat unfit for human food con-

trary to the provisions of that Act, and at the hearing of the information laid in pursuance of that resolution, S. was convicted before four justices, one of whom was a member of the sanitary committee, and had been present at the meeting at which the resolution was passed, it was held that a rule for a *certiorari* to bring up and quash the conviction must be made absolute. Field, J.: Section 258 of the Public Health Act has not the effect of enabling a person to act as prosecutor and judge in the same matter. It would require express terms in an Act of Parliament to produce that effect. I think that the meaning of sec. 258 is clear. It was thought that there might be inconvenience in carrying out the Act owing to the difficulty in boroughs of getting justices to sit who were not members of the corporation. The legislature, therefore, went one step in the direction of removing that difficulty by enacting that the mere fact of membership should not disqualify the justice. The section, therefore, removes one ground of interest merely. There is no warrant for holding that where a justice has acted as a member by directing a prosecution for an offence under the Act, he is a sufficiently disinterested person to be able to sit as a judge at the hearing of the information.

In *R.* v. *Gibbon and another, Justices of Lancashire*, L. R., 6 Q. B. D. 168; 29 W. R. 442, the proceedings were under a local Act, which provided that the corporation should be the authority for the execution of the Act, and that no person should be disqualified or disabled to act as a justice of the peace in any matter arising under the Act by reason of his being a member of the council or any committee thereof. In that case an information was laid by the borough surveyor before an alderman of the corporation, who was an *ex-officio* justice. The defendant was summoned to appear at petty sessions. The justices present at the petty sessions when the defendant appeared were not members of the corporation, but ordinary justices of the county at large. For the defendant, objection was taken that the information was invalid, as it had been laid before a member of the corporation, who was not entitled to receive it. This objection was upheld by the justices, who refused to proceed, although it was not alleged that the alderman before whom the information was laid had been present at any meeting of the town council, at which the question of the proceedings had been considered. On a motion to make absolute a *mandamus* commanding the justices to hear the case, it was held by Manisty, J., that the justices were right in the course which they had adopted. The corporation being entitled to the penalty were the prosecutors, and the alderman before whom the information was laid must be taken to have acted as a judge in considering the case before granting the summons.

In a later case, *R.* v. *Handsley*, L. R., 8 Q. B. D. 383; 30 W. R., 368, it was held where a section in a local Act provided that "any person shall not be disqualified fron acting as a justice in any matter arising under or in relation to the Act by reason of his being a ratepayer in the borough, or liable to any payments under the Act, or a member of the town council or any committee thereof," that it is not enough, in order to disqualify a justice from adjudicating on matters arising under the Act, to show that he is a member of the town council, and, as such, has a pecuniary interest in the result of the information or complaint, or that he is a member of the corporation charged with the duty of prosecuting the offence which he sits to adjudicate upon, but it must be established that he has such a substantial interest in the result as to make it likely that he has a real bias. In the case referred to, K., an officer of the corporation who was charged with the duty of collecting the borough rates, acting on his own discretion, and without consulting the town council or any committee or member thereof, obtained a summons for the non-payment of rates from a justice who was not a member of the town council. At the hearing of the summons, one of the sitting justices was a town councillor, and, on the ground that he was thereby disqualified from adjudicating upon the matter, the justices dismissed the summons. It was held that the justice was not disqualified, and that the summons must be heard and determined.

In *R.* v. *Justices of Huntingdon*, L. R., 4 Q. B. D. 522, where members of

the town council had taken an active part in discussions at meetings of the council, as to the making of an order under the Dogs Act, 1871, and were parties to the making of the order, and subsequently convicted a person for an offence under the order, the conviction was supported. See also *R.* v. *Mayor and Justices of Deal, ex parte Curling*, 45 L. T., N.S. 439; 30 W. R., 154. In that case A. had been convicted and fined for cruelty to a horse upon the prosecution of an officer of the Royal Society for the Prevention of Cruelty to Animals. Some of the justices who heard the summons and took part in the conviction were subscribers to a branch of that society, which received subscriptions in the country, and forwarded them to the society's office in London. All prosecutions by the society were directed by the secretary or committee in London, and no subscribers had any authority over, or responsibility for, such prosecutions, and the society never accepted any part of the penalties inflicted under the Cruelty to Animals Prevention Act, 1849, secs. 2, 18, 21. It was held upon a rule for *certiorari* that there was nothing in these facts to create a real bias in the minds of the justices which could amount to a disqualifying interest.

Clerk to Borough Justices.

159.—(1.) The justices for a borough shall from time to time appoint a fit person to be their clerk, to be removable at their pleasure.[1]

(2.) They shall not appoint or continue as their clerk an alderman or councillor of the borough, or the clerk of the peace of the borough, or of the county in which the borough is situate, or the partner of any such clerk of the peace.

(3.) The clerk to the justices shall not, by himself or his partner or otherwise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by those justices, or any of them, at any court of gaol delivery or quarter sessions.

(4.) If any person acts in contravention of the last foregoing provision of this section, he shall for every offence be liable to a fine not exceeding one hundred pounds, recoverable by action.[2]

(5.) One moiety of any fine so recovered shall, with costs, be paid to the person bringing the action to recover it.

(6.) Nothing in this Act shall prevent the justices for a borough from re-appointing as their clerk any person being clerk of the peace of the borough or of the county in which the borough is situate, or partner of any such clerk of the peace, if the person re-appointed was, on the sixth of August one thousand eight hundred and sixty-one, or has not ceased to be at the time of re-appointment, the clerk of those justices.[3]

[1] The clerk to the justices of a borough is removable at the pleasure of the council. A *quo warranto* will not, therefore, lie in respect of the office. See

R. v. *Fox*, 8 E. & B. 939; 4 Jur., N.S. 410; 27 L. J., Q. B. 151. See also *ex parte Richards*, referred to in note to sec. 17, p. 24, as to *quo warranto* in the case of the clerk to a local board.

The remuneration of the clerk to the justices may be paid out of the borough fund without an order. See Fifth Schedule, p. 229.

[2] Under the 5 & 6 Wm. 4, c. 76, s. 102, the penalty of £100 was limited to a person who, being an alderman or councillor, or clerk of the peace of the borough, or the partner or clerk of the clerk of the peace, acted as clerk to the justices of the borough, and, at the same time, was employed in the prosecution or defence of prisoners who were committed by the borough justices; and did not extend to persons who acted as clerks to the justices, although at the same time employed in the prosecution or defence of prisoners committed by such justices. (*Coe* v. *Lawrence*, 1 E. & B. 516; 17 Jur., 115; 21 L. J., Q. B. (140.) But where a clerk to the justices of a borough, which had no separate quarter sessions, was in partnership with P., who was clerk to the peace for the county, and who was entitled to receive fees upon the arraignment and trial of all prisoners at the quarter sessions of the county, and, by arrangement between him and P., the former was entitled to receive and did receive one-half of the fees taken by P. in the case of offenders committed for trial by the borough justices, it was held that such clerk was liable to an indictment for breach of the statutory provision, being interested in the prosecution of such offenders. *R.* v. *Fox*, 1 E. & E. 729, 746; 28 L. J., M. C. 157; 5 Jur., N.S. 1241. The penalty was extended by the 24 & 25 Vict., c. 75, to a clerk to justices, who, by himself or his partner, was directly or indirectly employed or interested in the prosecution of any offender so committed for trial, and the provision in sub-section 3 of this section is based on the provision in that Act.

Where a person is interested in the prosecution of parties committed for trial by the justices of a borough, this does not disqualify him for being appointed clerk to the justices, nor is the office avoided if, after such appointment, he becomes so interested. He is only liable as having acted illegally. *R.* v. *Fox*, 8 E & B. 939; 27 L. J., Q. B. 151; 4 Jur., N.S. 410.

[3] The 6th of August, 1861, is the date of the passing of the 24 & 25 Vict., c. 75, above referred to. In *Brown* v. *Evans*, 33 L. T., N.S. 737; 35 L. T., N.S. 877; 24 W. R., 937, it was held that if a clerk to the justices of a borough who was such at the time of the passing of that Act, and had not ceased to hold the office, was appointed clerk of the peace for the county in which the borough is situated, the justices of the borough might re-appoint him as their clerk, and were protected from liability to a penalty by the proviso to sec. 5 of the 24 & 25 Vict., c. 75, which is similar in terms to sub-section 6 of this Act.

Justices' Room.

160.—(1.) The council of a borough having a separate commission of the peace shall provide and furnish a suitable justices' room, with offices, for the business of the borough justices.

(2.) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose.

STIPENDIARY MAGISTRATE.

Appointment of Stipendiary Magistrate.

161.—(1.) If the council desire the appointment of a stipendiary magistrate for the borough, they may present a

petition for the appointment to the Secretary of State, and thereupon it shall be lawful for the Queen to appoint to that office a barrister of seven years standing.[1]

(2.) He shall hold office during Her Majesty's pleasure.

(3.) He shall, by virtue of his office, be a justice for the borough.[2]

(4.) There shall be paid to him such yearly salary, not exceeding, except with the consent of the council, that mentioned in the petition, as Her Majesty from time to time directs.[3]

(5.) It shall be paid by four equal quarterly payments, and in the same proportion up to the time of his death or ceasing to act.

(6.) On a vacancy, a new appointment shall not be made until the council again make application as before the first appointment.

(7.) More than one stipendiary magistrate may be appointed for a borough.

[1] This section requires that the person appointed shall be a barrister of seven years' standing. Under sec. 99 of the Municipal Corporations Act, 1835, it was only required that he should be of not less than five years' standing.

[2] As to the oaths to be taken and the declaration to be made by a borough justice, see notes to sec. 157.

[3] The remuneration of the stipendiary magistrate may be paid out of the borough fund without an order. See Fifth Schedule, p. 229.

BOROUGH QUARTER SESSIONS: RECORDER: CLERK OF THE PEACE.

Grant of Separate Court of Quarter Sessions.

162.—(1.) It shall be lawful for the Queen, on the petition to Her Majesty in Council of the council of a borough, to grant that a separate court of quarter sessions be holden in and for the borough.

(2.) The petition shall set forth the grounds of the application and the salary which the council are willing to pay to the recorder.

(3.) The grant may be made on and subject to such terms and conditions, if any, as to Her Majesty in Council seem fit.

(4.) Within ten days after receipt of the grant the council shall send a copy thereof, sealed with the corporate seal, to

the clerk of the peace of the county, or each county if more than one, in which the borough or any part thereof is situate.

The Municipal Corporations Act, 1835, required that the application should set forth "the state of the gaol." These words are omitted in consequence of the provisions of the Prisons Act, 1877.

The Recorder.

163.—(1.) It shall be lawful for the Queen from time to time to appoint for a borough having a separate court of quarter sessions a barrister of five years standing to be recorder of the borough.

(2.) He shall hold office during good behaviour.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) He shall not act as recorder, or as a justice, until he has taken the oaths required to be taken by a borough justice, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.[1]

(5.) He shall have precedence in all places within the borough next after the mayor.

(6.) He shall not, during his office, be eligible to serve in Parliament for the borough, or be an alderman, councillor, or stipendiary magistrate of the borough; but he may be appointed revising barrister for the borough, and shall be eligible to serve in Parliament except for the borough.

(7.) There shall be paid to him such yearly salary, not exceeding that stated in the petition on which the grant of a separate court of quarter sessions was made, as Her Majesty directs; but the same may at any time be increased by resolution of the Council, approved by the Secretary of State, without the resignation and re-appointment of the recorder being necessary.[2]

(8.) A person may be appointed recorder of two or more boroughs conjointly.

[1] As to the oaths to be taken by a borough justice, see secs. 157 (2) and 239; and for form of declaration, see Form B, in Part I., of Eighth Schedule, p. 233.

[2] The remuneration of the recorder may be paid out of the borough fund without an order. See Fifth Schedule, p. 228.

The Clerk of the Peace.

164.—(1.) The council of a borough having a separate court of quarter sessions shall from time to time appoint a fit person to be the clerk of the peace for the borough.

(2.) The clerk of the peace shall hold office during good behaviour.

(3.) The clerk of the peace may from time to time, by writing signed by him, appoint a fit person to act as deputy for him, in case of his illness, incapacity, or absence.

(4.) The appointment of the deputy shall be signified in writing, signed by the clerk of the peace, to the council, and shall be recorded in their minutes.

(5.) Where a table of the fees to be taken by the clerk of the peace has been made by the council and confirmed by the Secretary of State, and is for the time being in force, the clerk of the peace, if paid by fees, may take the fees to which he appears by that table to be entitled.

(6.) The council may from time to time make a new table of the fees to be taken by the clerk of the peace, but shall submit every such table to the Secretary of State for confirmation, and he may confirm and allow the same, either as submitted, or with such alterations, additions, or abatements as he thinks proper, and any such table shall be of no validity until it is so confirmed.

From *R.* v. *Hayward*, 2 B. & S. 585; 31 L. J., M. C. 177; 9 Jur., N.S., 45, it would appear that the removal of the clerk of the peace for misbehaviour is vested in the recorder and not in the town council.

With regard to the appointment of an assistant by the clerk of the peace when a second court of quarter sessions is formed, see sec. 168 (5); and as to the duties of the clerk of the peace with respect to fines and forfeitures, see sec. 222.

Recorder to hold Court of Quarter Sessions.

165.—(1.) The recorder shall hold, once in every quarter of a year, or oftener, if and as he thinks fit, or the Secretary of State directs, a court of quarter sessions in and for the borough.[1]

(2.) He shall sit as sole judge of the court.

(3.) The court shall be a court of record, and shall have cognisance of all crimes, offences, and matters cognisable by courts of quarter sessions for counties in England; and the recorder shall, notwithstanding his being sole judge, have power to do all things necessary for exercising that jurisdiction as fully as those courts.[2]

(4.) But the recorder shall not, by virtue of his office, have power—

(*a.*) To allow, apportion, make, or levy any borough rate; or

(*b.*) Subject to the provisions of this Act respecting appeals from a rate, to do any act in relation to the allowance, apportionment, making, or levying of any rate whatsoever; or

(*c.*) To grant any licence or authority to any person to keep an inn, alehouse, or victualling house to sell excisable liquors by retail; or

(*d.*) To exercise any power by this Act specially vested in the council.

[1] The authority of the recorder is not determined or suspended by the judges coming into the county, and acting under their commissions of *oyer* and *terminer* and general gaol delivery; and therefore he may hold quarter sessions of the peace during the time of the assizes in the same county. *Smith* v. *Reg.* (in error), New Sess. Cas. 564; 13 Q. B., 738; 18 L. J., M. C. 207; 13 Jur., 850.

[2] The 8 & 9 Wm. 3, c. 30, s. 6, provides that "the appeal against any order for the removal of any poor person from out of any parish, &c., shall be had, prosecuted, and determined at the general or quarter sessions of the peace for the county, division, or riding wherein the parish, &c., from whence such poor person shall be removed, doth lie and not elsewhere, any former law or statute to the contrary thereof in any wise notwithstanding." The court of quarter sessions of a borough having a grant of such court have, however, exclusive jurisdiction in the trial of appeals from orders of removal made by justices of the borough. *R.* v. *Justices of Salop*, *R.* v. *Justices of Lancashire*, *R.* v. *Justices of Suffolk*, 10 L. J., M. C. 138; 1 G. & D. 146; 2 Q. B. 85; 5 J. P., 484. In a case where justices of the borough of L. made an order for the removal of a pauper from L. to A., notice of appeal was given by the overseers of A. to the sessions of the county in which L. was situate, instead of to the borough sessions. The overseers having discovered their error, a letter was written one day before the holding of the borough sessions, abandoning the notice. The respondents, however, attended at the last-named sessions, and obtained an order for their costs. It was held that the recorder for the borough had jurisdiction to make such order, and that, under the circumstances, the respondents were entitled to their costs. *Reg.* v. *Recorder of Leeds*, 30 L. J., M. C. 86; 3 L. T., N.S. 699.

An indictment for keeping a disorderly house can be tried by the recorder at the court of quarter sessions, *R.* v. *Charles*, 7 Jur., N.S. 1308.

The recorder has power to reserve questions of law for the consideration of the Court for Crown Cases reserved. *R.* v. *Masters*, 3 New Sess. Cas. 326; 12 Jur., 942.

Power to Appoint Deputy Recorder.

166.—(1.) The recorder may, in case of sickness or unavoidable absence, appoint, by writing signed by him, a barrister of five years standing to act as deputy recorder at the quarter sessions then next ensuing or then being held, and not longer or otherwise.

(2.) But the sessions shall not be illegal, nor shall the acts of a deputy recorder be invalid, by reason of the cause of the absence of the recorder not being unavoidable.

Powers of Mayor in Absence of Recorder and Deputy Recorder.

167.—(1.) In the absence of the recorder and deputy recorder, the mayor shall, at the times for the holding of the court of quarter sessions, open the court, and adjourn the holding thereof, and respite all recognisances conditioned for appearing thereat, until such day as he then and there, and so from time to time, causes to be proclaimed.

(2.) But nothing in this section shall authorize the mayor to sit as a judge of the court for the trial of offenders, or, save as aforesaid, to do any other act in the character of a judge of the court.

Power for Recorder to form a Second Court.

168.—(1.) If at any time it appears to the recorder that the quarter sessions are likely to last more than three days, including the day of assembling, he may in his discretion, but subject to the provisions of this section, order a second court to be formed, and appoint by writing signed by him a barrister of five years standing to preside therein, and try such felonies and misdemeanours as shall be referred to him therein.

(2.) The barrister so appointed shall be styled assistant recorder, and shall have and exercise the same powers, subject to the same regulations (save as regards the making of a declaration as in the Eighth Schedule) as the recorder; and the proceedings had by and before the assistant recorder shall be as effectual as if had by or before the recorder, and shall be enrolled and recorded accordingly.[1]

(3.) But the assistant recorder shall not have any power or jurisdiction except while the recorder is sitting in quarter sessions; save that the assistant recorder may finish any case in which the prisoner has pleaded, and in the trial whereof the assistant recorder is actually engaged at the time when the recorder ceases to sit, and may sentence any prisoner tried before him, but not then sentenced.

(4.) If at any time during the sitting of the second court the recorder is of opinion that it is no longer required, he may direct the assistant recorder at a proper opportunity to adjourn it.

(5.) Where a second court is so formed, the clerk of the peace shall, on the request of the recorder, appoint an

assistant, and the recorder shall appoint an additional crier for the second court.

(6.) The recorder shall not exercise the powers given by this section unless—

(*a.*) It has been before each quarter sessions certified to him in writing signed by the mayor or two aldermen or the town clerk that the council have resolved that it will be expedient that those powers be exercised ; and

(*b.*) The name of the barrister to be appointed has at some previous time been approved by the Secretary of State as that of a fit person to be from time to time so appointed.

(7.) Where a resolution of the council is so certified, the resolution and certificate shall, if the resolution so provides, continue in force during twelve months from the date of the resolution, and during such continuance no fresh resolution or certificate shall be necessary.

(8.) An assistant recorder, assistant clerk of the peace, and additional crier shall have remuneration as appearing by the Fourth and Fifth Schedules.[2]

(9.) The powers given to the recorder by this section may be exercised by the deputy recorder.[3]

(10.) Appointments made and certificates given under this section shall not be subject to any stamp duty or other tax.

[1] As to the powers, &c., of the recorder, see sec. 165.

[2] The assistant recorder of a second court of quarter sessions is to receive for every day not exceeding two, or by resolution of the council, with the sanction of the Secretary of State, not exceeding six, ten guineas, an assistant clerk of the peace two guineas per day, an additional crier half a guinea per day. The remuneration is payable on a certificate of the recorder showing the amount due. The remuneration so certified by the recorder to be due to any assistant recorder, assistant clerk of the peace, or additional crier, may be paid out of the borough fund without any order. See pp. 228, 229.

[3] As to the deputy recorder, see sec. 166.

Liability of Borough having Quarter Sessions for Prosecutor's Expenses.

169. A municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of any other offence committed or supposed to have been committed in the borough the costs and

expenses attending the prosecution whereof are by law payable as in the case of a felony. The amount of those costs and expenses shall be ascertained as directed by law, and the order of the court for the payment thereof shall be directed to the treasurer of the borough.

SHERIFF.

Appointment of Sheriff in Counties of Cities and Counties of Towns.

170.—(1.) The council of every borough being a county of itself, and of the city of Oxford, shall on the ninth of November in every year appoint a fit person to execute the office of sheriff.

(2.) The appointment shall be made at the quarterly meeting of the council immediately after the election of the mayor.

(3.) The sheriff shall hold office until the appointment of his successor.

(4.) He shall have the same duties and powers as the sheriff or the person filling the office of sheriff in the respective borough or city would have had if this Act had not been passed.

Section 61 of the Municipal Corporations Act, 1835, on which this section is based, specified as the places for which sheriffs were to be appointed. Oxford, Berwick-upon-Tweed, the following counties of cities—Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, and York; and the following counties of towns—Carmarthen, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole, and Southampton. Coventry has ceased to be a county, see 5 & 6 Vict., c. 110. With regard to Berwick-upon-Tweed, it is declared by sec. 6 of the 6 & 7 Wm. 4, c. 103, that the borough and town of Berwick-upon-Tweed shall be a county of itself to all intents and purposes, except only so far as relates to the return of a member or members to serve in Parliament. There are no other counties of cities or towns

If the 9th of November is a Sunday, or a day appointed for public fast, humiliation, or thanksgiving, the day of election will be the next day afterwards, not being a Sunday or a day appointed for public fast, &c., as the case may be, sec. 230.

The fact of a person holding the office of sheriff does not disqualify him for being elected and for being a councillor (see sec. 12, 1 (*a*), p. 17); but a sheriff cannot act as a justice during the year of his shrievalty. See 1 Mar. Sess. 2, c. 8, s. 2, and *ex parte Colville*, L. R., 1 Q. B. D. 133; 45 L. J., Q. B. 133; 24 W. R. 156.

As to the powers, &c., of the sheriff appointed under this section for the City of Oxford, see *Grainger* v. *Taunton*, 3 Bing. N.C. 64.

CORONER.

Appointment, Fees, &c., of Borough Coroner in Boroughs having separate Quarter Sessions.

171.—(1). The council of a borough having a separate court of quarter sessions shall, within ten days next after receipt of the grant thereof by the council, and thenceforward from time to time, appoint a fit person, not an alderman or councillor of the borough, to be coroner of the borough; and thereafter no person other than the coroner so appointed shall take in the borough any inquisition belonging to the office of coroner.

(2.) The coroner shall hold office during good behaviour.

(3.) A vacancy in the office shall be filled up within ten days after it occurs.

(4.) The coroner shall have, by order of the recorder, remuneration as appearing in the Fourth and Fifth Schedules.

As to the computation of the period of "ten days" within which the appointment is to be made, see sec. 230.

In *R.* v. *Grimshaw*, 10 Q. B. 747; 16 L. J., Q. B., 385; 11 Jur., 965; it was held that a coroner could not be elected at a meeting of the council held by adjournment from a quarterly meeting, no summons or notice having been previously served upon the members of the council stating that such business was to be transacted.

Where a coroner had been appointed before the grant of a court of quarter sessions had passed the great seal, though within ten days after the intention of the Crown to make the grant had been notified to the council by the Secretary of State, and the coroner had acted under such appointment, and been recognized in his office by the council for several years, it was held that the office was full, and that a *quo warranto* information lay to oust a subsequently appointed coroner. *R.* v. *Grimshaw*, 10 Q. B. 747; 16 L. J., Q. B. 385; 11 Jur. 965.

The office of a coroner appointed under the Municipal Corporations Act, it was held in *R.* v. *Grimshaw*, 2 B. C. 146; 5 D. & L. 249, is not a corporate office within 9 Anne, c. 20, and therefore the relator in a *quo warranto*, in which judgment had been given for the Crown against the defendant for exercising the office, was not entitled to his costs from the defendant, under the 5th section of that Act.

The fact of a person holding the office of coroner does not disqualify him for acting as a justice of the peace. *Davies* v. *Justices of Pembrokeshire*, L. R., 7 Q. B. D. 513.

As to the remuneration of the coroner, see Fourth Schedule. The fees payable under this Act to the coroner are not to be paid out of the borough fund without order of the council. See sec. 140 and Fifth Schedule, pp. 119, 229.

With regard to the acting of the county coroner in a borough which has not a separate court of quarter sessions, see sec. 174.

As to the appointment of coroners to act within the jurisdiction of the Admiralty, see sec. 255.

Power of Borough Coroner to appoint a Deputy.

172.—(1.) In case of illness or unavoidable absence, the coroner shall appoint by writing signed by him a fit person, being a barrister or solicitor, and not an alderman or councillor of the borough, to act for him as deputy coroner during his illness or unavoidable absence, but not longer or otherwise.

(2.) The mayor or two justices for the borough shall on each occasion certify by writing signed by him or them the necessity for the appointment of a deputy coroner. This certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by the deputy coroner.

It is a lawful or reasonable cause for the absence of the coroner, and the acting of his deputy on an inquest, that the coroner was engaged in holding another inquest. Where the jury are sworn, and the inquest commences properly before a deputy, he should continue holding the inquest to its conclusion, although in the course of it the principal coroner may be accidentally present. An inquisition held by a deputy is properly described as taken before the principal coroner, and is properly signed in the name of the principal coroner by his deputy. *R.* v. *Perkin* (or *Perkins*), 7 Q. B., 165; 14 L. J., M. C. 87; 9 Jur., 686.

Returns by Borough Coroners.

173.—On or before the first of February in every year the coroner shall send to the Secretary of State a return in writing, in such form as the Secretary of State directs, of the particulars of each case in which the coroner or his deputy was called upon to hold an inquest during the year ending on the then last thirty-first of December.

Acting of County Coroner in Borough.

174.—(1.) Where a borough has not a separate court of quarter sessions no person other than the coroner for the county or district in which the borough is situate shall take in the borough any inquisition belonging to the office of coroner.

(2.) That coroner shall, for every inquisition duly taken by him within the borough, be entitled to such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within the county or district.

By 6 & 7 Vict., c. 12, after reciting that it often happens that it is unknown where persons lying dead have come by their deaths, and also that such persons may die in other places than those in which the cause of death happened, it is enacted that the coroner only within whose jurisdiction the body of any person upon whose body an inquest ought to be holden shall be lying dead, shall hold the inquest, notwithstanding that the cause of death did not arise within the jurisdiction of such coroner; and in the case of any body found dead in the sea, or any creek, river, or navigable canal within the flowing of the sea, where there shall be no deputy coroner for the jurisdiction of the Admiralty of England, the inquest shall be holden only by the coroner having jurisdiction in the place when the body shall be first brought to land.

In *R.* v. *Ellis*, 2 C. & K. 470, it was held that an inquest, when the cause of the death, and the death occurred in a county and the body after death was removed to a city, was properly held by the coroner of the city.

BOROUGH CIVIL COURT.

Judge of Borough Civil Court where there is a Recorder.

175.—(1.) The recorder, if there is one, shall continue to be the judge of the borough civil court, except in the following cases, that is to say, where the court is regulated by a local Act of Parliament, or where a barrister of five years standing acted at the passing of the Municipal Corporations Act, 1835, as judge or assessor of the court.

(2.) The recorder, if judge, may, in the case of his illness or unavoidable absence, appoint by writing signed by him a barrister of five years standing to act for him as deputy judge of the court at the court or courts then next to be holden, or then being holden, and not longer or otherwise.

(3.) The recorder on every occasion of his appointing a deputy judge shall forthwith send to the Secretary of State a statement of his reason for so doing.

(4.) A court shall not be illegal, nor shall the acts of the deputy judge be invalid, by reason of the absence of the recorder not being unavoidable.

(5.) The recorder, where judge, and the deputy judge, shall have such remuneration as the council fix by byelaw.

(6.) Where the recorder is judge, the court may in his absence be holden for all purposes within the competency of the court, except the trial of issues of fact or of law, before any person, being a barrister of five years standing or a solicitor of five years practice, from time to time appointed for that purpose by the recorder by writing signed by him.

(7.) Where the recorder or his deputy is judge, all orders, affidavits, and matters, except the trial of issues in law or

in fact, relating to the business of the court, if not regulated by a local Act, may be made, sworn, or done in or out of court in the absence of the recorder and his deputy by or before the registrar or such other person, being a barrister of five years standing, or a solicitor of five years practice, as the recorder appoints by writing signed by him.

"Borough civil court" is defined by sec. 7 as meaning an inferior court of record for the trial of civil actions which, by charter, custom, or otherwise is or ought to be holden in a borough, but does not include a county court.

As to the case of a borough where there is a borough civil court but no recorder, see sec. 176.

With regard to the judge of a borough civil court holding office during good behaviour, see sec. 177.

With respect to the times of holding a court, see secs. 180 and 182.

As to the jurisdiction of a borough civil court and the power of the judge to make rules of procedure, &c., see secs. 181, 182, 183, and 184.

The remuneration of the recorder in his capacity of judge of the borough civil court may be paid out of the borough fund without an order of the council. See sec. 140 and Part I. of Fifth Schedule, pp. 119, 229.

Where the town clerk does not act as registrar, the council are from time to time to appoint a registrar of the borough civil court (sec. 178 (1)). As to the fees to be taken by the registrar, see sec. 178 (3) (4).

For prohibition against the registrar or any other officer of the court by himself or by any partner or clerk practising as a solicitor or attorney in the court, &c., see sec. 179.

Judge of Borough Civil Court where there is no Recorder.

176. Where there is a borough civil court, but no recorder, such officer of the borough as by the charter constituting the court, or by custom, is the judge of the court, shall continue to be and act as such judge; and the council, whether the court is regulated by a local Act or not, shall have power for that purpose to appoint the necessary officer.

From *Addison* v. *Mayor of Preston*, 12 C. B. 108; 21 L. J., C. P. 146; 16 Jur. 643; it would appear that the judge and assessor of a borough court, who has been appointed by the borough council with a salary, cannot maintain an action against the corporation for the amount of such salary.

Tenure of Judge.

177. Every judge or assessor of a borough civil court, other than the mayor, shall hold his office during good behaviour.

Registrar and other Officers and Fees.

178.—(1.) Except where the town clerk acts as registrar, the council shall from time to time appoint a registrar of the borough civil court.

(2.) The council shall from time to time appoint other requisite officers and servants of the court.

(3.) The fees to be taken by the registrar and other officers of the court shall be from time to time fixed by the council, subject to the approval of the Secretary of State.

(4.) If and as far as the fees are not so fixed, they shall be those usually taken before the passing of the Municipal Corporations Act, 1835.

With regard to the orders, affidavits, and matters which may be made, sworn, or done by or before the registrar, see sec. 175 (7).

For prohibition against the registrar, or any other officer of the court, by himself or by any partner or clerk practising as a solicitor or attorney in the court, &c., see sec. 179.

As to the tables of fees being posted conspicuously in certain places, see sec. 234.

Solicitors.

179.—(1.) The registrar of a borough civil court, or any other officer of the court, shall not himself, or by any partner or clerk, practise as a solicitor or attorney, in the court; nor shall any partner or clerk of the registrar act as agent for any other solicitor or attorney in the court.

(2.) Unless so disqualified, every solicitor of the Supreme Court of Judicature may practise as solicitor in the court.

It will be observed that whilst the registrar "or any other officer of the court" is precluded from practising in the court as a solicitor or attorney, either by himself or by a partner or clerk, the prohibition against acting as the agent for any other solicitor or attorney in the court, in terms only applies to the partner or clerk of the registrar.

Time of Holding Court.

180.—(1.) Each borough civil court shall be holden for trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two successive courts.

(2.) Subject as aforesaid, where the recorder is judge, the court shall be holden at such times as the recorder thinks fit, or as the Secretary of State from time to time directs.

Procedure.

181. Every personal action brought in a borough civil court shall be commenced by writ of summons.

Power for Judge to make Rules of Procedure.

182.—(1.) Subject to the provisions of this Act, the judge of a borough civil court may from time to time make rules for regulating the times of holding the court and the procedure, practice, and pleadings therein, and the fees of solicitors therein, and may by any rule revoke or alter any former rule.

(2.) But where there is a recorder and he is not the judge of the court, every rule made by the judge shall be subject to the approval of the recorder in writing signed by him; save that this provision shall not apply where the recorder acts as deputy of the judge.

(3.) In every case (whether the recorder is judge or not) rules made by the judge under this section shall be subject to the approval of three judges of the High Court.

As to the times of holding the court, see also sec. 180.

Jurisdiction of Court.

183.—(1.) Where by the Municipal Corporations Act, 1835, jurisdiction was conferred on a borough civil court whereof the recorder is judge, or wherein a barrister of five years standing acts as judge or assessor, to try personal actions wherein the sum sought to be recovered does not exceed twenty pounds, and actions of ejectment between landowner and tenant wherein the annual rent of the property whereof possession is sought to be recovered does not exceed twenty pounds, no fine having been reserved or made payable, then that court shall continue to have that jurisdiction.

(2.) Any action wherein the title to land of any tenure, or to any tithe, toll, market, fair, or other franchise is in question, shall not be tried in a borough civil court which before the passing of the Municipal Corporations Act, 1835, had not authority to try actions wherein such titles were in question. If it appears to such a court that such a title is in question in an action the jurisdiction of the court in the matter of the action shall cease; and the court may, if it thinks fit, award costs against the party commencing the action.

See also sec. 184 as to the saving of any power, jurisdiction, or authority of a borough civil court, or of a judge, assessor, or registrar of the court, &c.

Saving for Borough Civil Courts and for 35 & 36 *Vict., c.* 86.

184.—(1.) Nothing in this Act shall take away or abridge in respect of local extent, amount, or otherwise, any power, jurisdiction, or authority of a borough civil court, or of a judge, or assessor, or registrar thereof, or of any deputy of a judge, or assessor, or registrar thereof, or affect the constitution or procedure thereof; and, subject to the express provisions of this Act, such power, jurisdiction, authority, constitution, and procedure, shall continue and be as if this Act had not been passed.

(2.) Nothing in this Act shall affect the Borough and Local Courts of Record Act, 1872.

Power to Extend Jurisdiction of Borough Civil Court.

185. It shall be lawful for the Queen, by Order in Council, on the joint petition of the justices of a county in quarter sessions and of the council of a borough, to grant that the jurisdiction of the borough civil court shall extend over any district adjacent to the borough within the jurisdiction of those quarter sessions; and the same shall extend accordingly.

Section 35 of the 7 Wm. 4, and 1 Vict., c. 78, on which this section is based, also referred to courts of record or of conscience for the recovery of small debts, but, as explained in the memorandum which prefaced the Bill as brought in, the reference is not reproduced, as such courts are obsolete.

BOROUGH JURIES.

Provisions as to Juries in Boroughs.

186.—(1.) Every burgess of a borough having a separate court of quarter sessions or a borough civil court shall, unless by law exempt or disqualified, be qualified and liable to serve on grand juries in the borough, and on juries for the trial of issues joined in either of those courts.

(2.) The clerk of the peace shall give public notice of the time and place of holding the court of quarter sessions ten days at least before the holding thereof, and shall, seven days at least before the holding thereof, summon a sufficient number of persons, qualified and liable, to serve as grand jurors at the sessions.

(3.) The clerk of the peace and registrar of the borough civil court respectively shall also summon a sufficient number of persons, qualified and liable, to serve as jurors at every such sessions, and at the holding of every such civil court for the trial of causes, if there is any cause then to be tried.

(4.) The summons may be made by showing to the person to be summoned, or, if he is absent from his usual place of abode, by leaving with some person therein inhabiting a notice containing its substance, and signed by the clerk of the peace or registrar, as the case may be.

(5.) The clerk of the peace and registrar shall make out lists containing the surnames and other names, abodes, and descriptions of the persons summoned by them respectively.

(6.) No person shall be summoned under this section to serve as a juror more than once in any year, unless every person qualified and liable so to serve has been already summoned once in that year.

(7.) If any person, having been duly summoned under this section, fails to attend according to the summons, or, being thrice called, does not answer to his name, or after his appearance wilfully withdraws himself from the court, he shall (unless some reasonable excuse is proved by him to the satisfaction of the court), be liable to pay a fine of such amount as the court thinks fit.

(8.) If the person on whom any such fine is imposed refuses to pay it to the person authorized by the court to receive it, the court may, then or at the next sitting, by order of the court signed by the clerk of the peace or registrar, cause to be levied, by distress and sale of the goods of the person on whom the fine is imposed the fine, and the reasonable charges of the distress and sale.

(9.) Nothing in this Act shall affect the Juries Act, 1870.

As to the persons who are to be deemed to be burgesses, see sec. 9.

With regard to exemptions from serving on juries, it is to be observed that nothing in this Act is to affect the Juries Act, 1870 (33 & 34 Vict., c. 77), and by sec. 9 of that Act it is provided that the persons described in the schedule thereto shall be severally exempt, as therein specified, from being returned to serve, and from serving upon any juries or inquests whatsoever. The persons specified in the schedule as exempt from serving on juries are as follows:—Peers; members of parliament; judges; clergymen; Roman Catholic priests; ministers of any congregation of protestant dissenters, and of Jews whose place of meeting is duly registered, provided they follow no secular occupation except that of a schoolmaster; serjeants, barristers-at-law, certificated conveyancers, and special pleaders, if actually practising; members of the Society

of Doctors of Law and advocates of the civil law, if actually practising; attorneys, solicitors, and proctors, if actually practising, and having taken out their annual certificates, and their managing clerks, and notaries public in actual practice; officers of the courts of law and equity, and of the Admiralty and Ecclesiastical Courts, including therein the Courts of Probate and Divorce, and the clerks of the peace or their deputies, if actually exercising the duties of their respective offices; coroners; gaolers and keepers of houses of correction, and all subordinate officers of the same; keepers in public lunatic asylums; members and licentiates of the Royal College of Physicians in London, if actually practising as physicians; members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, if actually practising as surgeons; apothecaries certificated by the court of examiners of the Apothecaries Company, and all registered medical practitioners and registered pharmaceutical chemists, if actually practising as apothecaries, medical practitioners, or pharmaceutical chemists respectively; officers of the navy, army, militia, and yeomanry while on full pay; the members of the Mersey Docks and Harbour Board; the master, wardens, and brethren of the Corporation of Trinity House of Deptford Strond; pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed under any Act of Parliament or charter for the regulation of pilots; the household servants of Her Majesty, her heirs and successors; officers of the post office; commissioners of customs, and officers, clerks, or other persons acting in the management or collection of the customs; commissioners of inland revenue, and officers or persons appointed by the commissioners of inland revenue, or employed by them or under their authority or direction in any way relating to the duties of inland revenue; sheriffs' officers; officers of the rural and metropolitan police; magistrates of the metropolitan police-courts, their clerks, ushers, doorkeepers, and messengers; members of the council of the municipal corporation of any borough, and every justice of the peace assigned to keep the peace therein, and the town clerk and treasurer for the time being of every such borough, so far as relates to any jury summoned to serve in the county where such borough is situate; burgesses of every borough in and for which a separate court of quarter sessions shall be holden so far as relates to any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county wherein such borough is situate; justices of the peace so far as relates to any jury summoned to serve at any sessions of the peace for the jurisdiction of which he is a justice; officers of the Houses of Lords and Commons.

No man who has been attainted of any treason or felony or convicted of any crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry, is qualified to serve on juries in any court or on any occasion whatsoever (33 & 34 Vict., c. 77, s. 10).

EXCEPTIONAL PROVISIONS.

Grants to Boroughs not Affected by Subsequent Grants to Counties.

187. The grant to a borough of a separate commission of the peace, or of a separate court of quarter sessions, shall not be prejudicially affected by any subsequent grant to or for any county of a commission of the peace or other commission.

Trial of Offences Committed in Counties of Cities and Counties of Towns.

188.—(1) Until Her Majesty is pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any borough being a county of a city or county of a town, all bills of indictment for offences committed within that borough shall be preferred, and all proceedings thereon shall be had, in the manner authorized by the Act of the thirty-eighth year of the reign of King George the Third, chapter fifty-two, "to regulate the trial of causes, indictments, and other proceedings which arise within the counties of certain cities and towns corporate within the kingdom."[1]

(2.) For the purposes of that Act each borough named in the Sixth Schedule shall be considered as next adjoining the county named in conjunction therewith.[2]

[1] For the boroughs which are counties of cities or counties of towns, see note to sec. 170.

[2] The counties to which the boroughs referred to in this sub-section are to be considered adjoining for purposes of criminal trials are as follows: Berwick-upon-Tweed, Northumberland; Bristol, Gloucestershire; Chester, Cheshire; Exeter, Devonshire; Kingston-upon-Hull, Yorkshire; and Newcastle-upon-Tyne, Northumberland.

Jurisdiction in Places Separated from Borough.

189. Where under any Act a place has ceased or ceases to be part of a borough or the liberties thereof, all matters by virtue of a local Act of Parliament or otherwise cognisable by a justice or by the quarter sessions having jurisdiction within that place shall be cognisable by the justices or the quarter sessions of the county, liberty, or jurisdiction within which the place is situate in the same manner and subject to the same provisions as they were within the jurisdiction of the justices or the quarter sessions for that place.

PART IX.

POLICE.

WATCH COMMITTEE; CONSTABLES.

Council to Appoint Watch Committee.

190.—(1.) The council shall from time to time appoint, for such time as they think fit, a sufficient number not

exceeding one-third of their own body, who, with the mayor, shall be the watch committee.

(2.) The watch committee may act by a majority of those present at a meeting thereof, but shall not act unless three are so present.

It will be observed that, under this section, a sufficient number not exceeding one-third of the council, with the mayor, are to constitute the watch "committee." There was no such limitation under the Municipal Corporations Act, 1835. Under that Act the council were to appoint "a sufficient number of their own body" who, with the mayor for the time being, were to be the watch committee of the borough.

Appointment, Duties, and Powers of Borough Constables.

191.—(1.) The watch committee shall from time to time appoint a sufficient number of fit men to be borough constables.

(2.) A borough constable shall be sworn in before a justice having jurisdiction in the borough, and when so sworn shall, in the borough, in the county in which the borough or any part thereof is situate, and in every county being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges and be liable to all such duties and responsibilities as any constable has and is liable to for the time being in his constablewick at common law or by statute, and shall obey all such lawful commands as he receives from any justice having jurisdiction in the borough or in any county in which the constable is called on to act.

(3.) The watch committee may from time to time frame such regulations as they deem expedient for preventing neglect or abuse, and for making the borough constables efficient in the discharge of their duties.

(4.) The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same.

(5.) When a borough constable is so dismissed, or ceases to belong to the constabulary force of the borough, all powers vested in him as a constable by virtue of this Act shall immediately cease.

(6.) Nothing in this section shall interfere with the operation of an Act of the session of the third and fourth

years of Her Majesty's reign "to amend the Act for the establishment of county and district constables;" and throughout that Act a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

As to the service and execution by constables of summonses for appearance, warrants to enforce appearance, warrants for apprehension, and search warrants, see sec. 223.

By the 19 & 20 Vict., c. 69, s. 9, it is provided that no head or other constable already appointed or hereafter appointed for any borough under the 4 & 5 Wm. 4, c. 76, except special constables, shall, during the time he continues to be such constable, or within six calendar months after he has ceased to be such constable, be capable of giving his vote for the election of any person to any municipal office in such borough, or for the election of a member to serve in parliament for such borough, or any county in or to which such borough is situate, either wholly or in part, or adjoins, or for any borough within any such county; nor shall any such constable by word, message, writing, or in any other manner endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough, or to be a member to serve in Parliament for any such borough or county. A constable offending therein is to forfeit the sum of £10, to be recovered in any court of competent jurisdiction by any person who shall sue for the same within six months after the commission of the offence, and one-half of the sum recovered is to be paid to the person suing for the same, and the other half to the treasurer of the borough. Nothing contained in that section is however to subject any candidate to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

In *De Boinville* v. *Arnold*, 1 C. B., N.S. 3; 26 L. J., C. P. 65; 3 Jur., N.S. 642; it appeared that, under a charter, the mayor, aldermen, and common council of a borough appointed annually serjeants-at-mace, whose duties were to execute warrants, apprehend prisoners, assist in keeping the peace, &c. After the passing of the Municipal Corporations Act, 1835, the corporation continued to appoint serjeants-at-mace in the same manner as theretofore, and they discharged the same duties as previously, and were paid by the treasurer of the borough. A police force was also appointed by the watch committee. It was held that the serjeants-at-mace were appointed by the corporation under the charter and not under the Municipal Corporations Act, and were, therefore, not disqualified as "constables" from voting in the election of a borough member by sec. 9 of the 19 & 20 Vict., c. 69.

Quarterly Returns as to Borough Constables.

192.—The watch committee shall, on the first of January, the first of April, the first of July, and the first of October in every year, send to the Secretary of State a copy of all rules from time to time made by the watch committee or the council for the regulation and guidance of the borough constables.

For rules referred to, see sec. 191 (3), p. 164.

Power for Constables to Apprehend Disorderly Persons, &c.

193. A borough constable may, while on duty, apprehend any idle and disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the borough constable in attendance at the nearest watch-house, in order that he may either be secured until he can be brought before a justice, or, where the constable in attendance is empowered and thinks fit to take bail, give bail for his appearance before a justice.

As to the power of borough constables to take bail, see sec. 227.

Penalties on Constables for Neglect of Duty.

194. If a borough constable is guilty of neglect of duty, or of disobedience to a lawful order, he shall for every such offence be liable on summary conviction to imprisonment for any time not exceeding ten days, or, in the discretion of the court, to a fine not exceeding forty shillings, or to be dismissed from his office.

Penalty for Assaults on Constables.

195.—(1.) If any person assaults or resists a borough constable in the execution of his duty, or aids or incites any person so to assault or resist, he shall for every such offence be liable on summary conviction to a fine not exceeding five pounds.

(2.) But nothing in this section shall prevent any prosecution by way of indictment against any such offender, except that he shall not be prosecuted both by indictment and in a summary manner for the same offence.

The question has been raised whether the re-enactment of this provision has not the effect of superseding sec. 12 of the Prevention of Crimes Act, 1871, which renders a person convicted of an assault on a constable, when in the execution of his duty, liable to a penalty of £20, or to be imprisoned for six months with or without hard labour. In *Mitchell* v. *Brown*, 28 L. J., M. C. 55, Campbell, C. J., said: If a later statute again describes an offence which has been created by a former statute, and affixes a different punishment to it and varies the procedure, the later enactment must be taken as operating by way of substitution and not cumulatively. See also *Henderson* v. *Sherburn*, 2 M. & W. 239, and *Middleton* v. *Crofts*, 2 Atk. 674.

In *R.* v. *Brickhall*, 23 L. J., M. C. 156; 10 L. T., N.S. 385; 12 W. R. 826, it was held that on a summons, under the Municipal Corporations Act, for assaulting a constable in the execution of his duty, the accused could not be convicted of a common assault under the 24 & 25 Vict., c. 100, s. 42.

SPECIAL CONSTABLES.

Appointment of Special Constables.

196.—(1.) Two or more of the justices having jurisdiction in a borough shall, in October in every year, appoint, by precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough.

(2.) Every such special constable shall make a declaration to the effect of the oath set forth in the Act of the session of the first and second years of the reign of King William the Fourth, chapter forty-one, "for amending the laws relative to the appointment of special constables, and for the better preservation of the peace," and shall have the powers and immunities, and be liable to the duties and penalties, enacted by that Act.

(3.) He shall act when so required by the warrant of a justice having jurisdiction in the borough but not otherwise.

(4.) The warrant shall recite that in the opinion of the justice the ordinary police force of the borough is insufficient at the date of the warrant to maintain the peace of the borough.

(5.) Nothing in this section shall make any person having a right to vote at a parliamentary election liable or compellable to serve as a special constable at or during the election.

(6.) Special constables shall be entitled to remuneration as appearing by the Fourth and Fifth Schedules.

According to the decision in *R.* v. *Hulton*, 13 Q. B. 592; 19 L. J., M. C. 32; 13 Jur., 1093, the statute 1 & 2 Wm. 4, c. 41, was not repealed with respect to the appointment and remuneration of special constables within boroughs by the Municipal Corporations Act, 1835, and an order by the justices of the borough of M., which had a separate court of quarter sessions, upon the treasurer of the county for payment of the expenses, &c., of the special constables appointed under the 1 & 2 Wm. 4, c. 41, for the borough, was good.

The oath set forth in the 1 & 2 Wm. 4, c. 41, is as follows:—"I, *A. B.*, do swear, That I will well and truly serve our Sovereign (Lady the Queen) in the office of specia' constable for the parish [or township] of , without favour or affection, malice or illwill; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of (Her) Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law. So help me God."

From the Fourth Schedule to this Act, p. 228, it will be observed that the remuneration to be paid to a special constable for every day during which he is called out to act as such is 3*s.* 6*d.*

WATCH RATE.

Levy of Watch Rate.

197.—(1.) Where at the commencement of this Act any rate might be levied in a borough, or in any part of a borough, for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, the council may from time to time make and levy a watch rate on the occupiers of all hereditaments within such parts of the borough as are watched by day and by night, and as are from time to time, by order of the council, declared liable to watch rate.[1]

(2.) The watch rate shall be made on an estimate of the net annual value of the several hereditaments rated thereto, that is to say, of the rent at which, one year with another, they might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurances, and other expenses necessary to maintain them in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rent-charge (if any), being paid by the tenant.

(3.) The watch rate may be made by one rate made yearly, or by two or more rates made half-yearly or otherwise, and may be of any amount, in the discretion of the council, not exceeding in any year eightpence in the pound on the net annual value of the hereditaments rated thereto.

(4.) For the purposes of the watch rate the council and all persons concerned, including overseers, shall have all powers given to them in respect of the borough rate for ordering, making, assessing, levying, raising, collecting, or paying the same, or as near thereto as the nature of the case admits.[2]

(5.) The provision of this Act relating to orders of vestries for the rating, in some cases, of owners, instead of occupiers, shall extend to the watch rate.[3]

(6.) Nothing in the foregoing provisions of this section (except the general power to levy a watch rate) shall apply to any borough in which the borough fund is sufficient with the aid of the amount only of watch rate which could for

the time being be raised therein under the Municipal Corporations Act, 1835, and without the aid of any borough rate, to defray the expenses of the constabulary force of the borough, with all other expenses legally payable out of the borough fund; but nothing in the present provision shall affect any benefit or right reserved by Part X., or make the borough fund liable to any expenses with which it would not be otherwise chargeable.[4]

(7.) Nothing in this section shall affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police.

(8.) Nothing in this section shall make liable to watch rate any hereditaments exempted by any local Act from payment of watch rate.[5]

(9.) Nothing in this section shall alter the comparative liability to watch rate of any hereditaments which are under any local Act in respect of any watch rate entitled to any deduction from, or chargeable with any increase on, an equal pound rate; but the like comparative deductions and increased charges shall be made under this section.[6]

[1] In *Great Western Railway Co.* v. *Mayor &c. of Maidenhead*, 11 C. B., N.S. 653; 31 L. J., M. C. 113; it was held, that when the town council of a borough had caused the whole of the borough to be watched by day and by night, and had made an order that the whole borough should be liable to the watch rate, the council were empowered to rate to such watch rate the occupiers of land within the borough, though situate more than 200 yards distant from a street or continuous line of houses regularly watched within the borough. Erle, C. J. said:—"The only power to rate for watching was limited by the 5 & 6 Wm. 4, c. 76, to rating properties within the borough which were not more than 200 yards distant from any street or continuous line of houses not regularly watched within the borough, so that the burden was to be placed only where the benefit was derived. That was one of the restrictions contained in the Act of 5 & 6 Wm. 4, c. 76. Then the 2 & 3 Vict., c. 28, was passed, for the express purpose of taking away some of these restrictions, and it expressly authorizes the council to levy a watch rate 'upon the occupiers of all messuages, lands, tenements, and hereditaments within those parts of the borough which shall be watched by day and by night, and which from time to time by any order of the council of such borough shall be declared liable to such watch rate.' If then, this property of the appellants is so watched by day and by night, let it contribute to the watch rate. The council of the borough have declared by their order that it is liable to be rated, and consequently by the statute of the 2 & 3 Vict., it ought to be rated accordingly."

In an earlier case, *Hallett and another* v. *Churchwardens and Overseers of Brighton* (7 E. & B. 342; 26 L. J., M. C. 61; 3 Jur., N.S. 237), it appeared that, by a local Act, commissioners were constituted and were empowered, *inter alia*, to appoint watchmen, &c., for guarding, watching, and keeping and preserving the peace of the town. The local Act authorized the levy of a rate for the purposes of the Act, but arable lands, meadows, pasture lands, &c., were to be exempt from assessment. The town was constituted a borough, and all the powers of the commissioners were transferred to the town council. Constables were appointed by the watch committee, and the whole of the

borough was watched by day and by night. No separate watch rate was made by the town council, nor was any order made by them that farms should be rated to a watch rate. The town council made an order by which they assessed the parish of Brighton for a sum of £9,000, and directed the overseers to pay the amount out of the poor rate, the amount being required for raising moneys to meet the several charges and expenses to which the borough fund was applicable, including the cost of watching. Against this rate the appellants, who were the occupiers of certain farms which were regularly watched by night and by day, parts of the lands being less than 200 yards from streets or continuous lines of houses regularly watched, on the ground that the rate was raised for the purposes of paying money required, amongst other things, for watching, and that the lands for which they were rated were not liable to contribute to that purpose. It was argued that the question to be determined was whether so much of the property within the borough as was more than 200 yards from streets or continuous lines of houses was liable to be rated in any form or manner to a rate which would include the expense of watching. It was held that the town council might make all the property of the appellants within the borough which was within 200 yards of a street or continuous line of houses rateable to a watch rate, but not that part of their property which was beyond the 200 yards.

As to the warrant for the levy or collection of a watch rate, see sec. 199.

[3] This provision applies to the case where the watch rate is levied throughout the parish.

As to the case where part only of a parish is liable to a watch rate, see sec. 198.

With respect to the powers of the council, overseers, &c., as to the ordering making, assessing, levying, &c., of a borough rate, see secs. 144 and 145, pp. 126 & 130.

It will be observed from sec. 250 (3), that nothing in this Act is to affect the right of the council of a borough to collect by their own officers the watch rate, where at the commencement of this Act they are authorized by law to collect, and are so collecting the same.

[3] For provisions as to the rating of owners instead of the occupiers in the case of a borough rate, see sec. 147, p. 134.

[4] As to the watch rate which was authorized to be levied by the Municipal Corporations Act, 1835, see sec. 92 of that Act.

As to benefits or rights reserved by Part X., see p. 172.

[5] See also the saving with regard to the Universities of Oxford and Cambridge in sec. 257.

[6] See also the provision in sec. 123, p. 106, as to the levy of rates for special purposes.

Watch Rate in Divided Parish.

198.—(1.) Where part only of a parish is liable to watch rate, the overseers shall not pay out of the poor rate the amount of the watch rate charged by the council on that parish, but shall make a separate rate or assessment on the part or parts only of the parish liable to watch rate; which rate shall be made in like manner and under like regulations and with like means and remedies for recovery thereof as in the case of a rate levied in respect of the contribution towards a borough rate.[1]

(2.) No such separate rate shall be demanded, collected, or payable until it has been allowed by two justices usually

acting in and for the borough and has been published, as a poor rate is by law required to be allowed and published.[2]

(3.) Any person who thinks himself aggrieved by such a separate rate may appeal to the recorder at the next quarter sessions for the borough, or if there is none to the next court of quarter sessions for the county wherein the borough is situate, or whereto it is adjacent; and the recorder or court shall hear and determine the same, and shall award relief in the premises as in cases of appeal against a poor rate.[3]

(4.) Every such separate rate may be of the rate in the pound necessary for raising the sum charged by the council but not exceeding twopence in the pound beyond the rate in the pound at which the council have computed the watch rate charged by them.[4]

(5.) The overseers shall account for money collected under such a separate rate as for money collected under a poor rate; and if there is a surplus in their hands, they shall pay it to the treasurer, to go to the borough fund, to the credit of the place for which the rate was made, and in part payment of the next watch rate laid on that place by the council.[5]

(6.) The council or a committee appointed for this purpose, on application on behalf of any person rated to such a separate rate to be discharged therefrom, and on proof of his inability through poverty to pay the amount charged on him, may order that he be excused from the payment thereof, and may strike out his name therefrom; and the sum at which he was rated shall not thereafter be collected, nor shall any person be charged with it or be liable to account for it or for omitting to collect or receive it.

(7.) The overseers making any such separate rate may, by warrant from two justices usually acting in and for the borough, levy on every person refusing to pay the rate the amount charged on him, with the costs and charges of recovering and enforcing payment thereof, to be ascertained by the justices, by distress and sale of the offender's goods, rendering to him the overplus; and in default of such distress two justices may commit him to prison, there to remain without bail until payment of the amount and arrearages.

[1] With regard to the provisions as to the levy of a rate in respect of the contribution towards a borough rate, see sec. 145 and 146, pp. 130, 131.

As to the warrant for the levy of a separate rate as watch rate, see sec. 200.

[2] A poor rate is required to be published on the Sunday next after its allowance by justices by affixing a notice of the making of the rate, previous to divine service, on or near to the usual or principal door of each of the churches or chapels within the parish or township. In a parish in which there is no church or chapel, the rate is to be deemed to be duly published if, within fourteen days after the making of the rate, notice thereof has been given by affixing such notice in some public or conspicuous place or situation in the parish.

[3] As to appeals against a poor rate, see p. 132.

[4] This provision is made to meet the case of a portion of the rate becoming irrecoverable, and to admit of the payment of the expenses attending the collection of the rate, &c.

[5] With regard to the accounting by overseers for money collected under a poor rate, see pp. 133 and 134.

Warrant for Levy of Watch Rate.

199. Any warrant required for the levy or collection of a watch rate or separate rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

Watch Rate to go to Borough Fund.

200. All money raised by a watch rate, or by a separate rate as last aforesaid, shall go to the borough fund.

PART X.

FREEMEN.

Definition of Freeman.

201. In this Part the term freeman includes any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835, under the name either of freemen or of burgesses.

The Municipal Corporations Act, 1835, reserved the rights of every person who had been admitted, or who might thereafter have been admitted a freeman or burgess of the borough, if that Act had not been passed.

Freedom not by Gift or Purchase.

202. No person shall be admitted a freeman by gift or by purchase.

The Freemen's Roll.

203. The town clerk of every borough for which at the commencement of this Act there is a Freemen's Roll shall continue to keep a list, called the Freemen's Roll.

The freemen's roll is to be open to public inspection, and the town clerk is to deliver copies thereof to any person on payment of a reasonable price for each copy. (Sec. 233 (5)).

Admission to Freedom.

204. Where a person is entitled to be admitted a freeman for the purposes of this Part in respect of birth, servitude, or marriage, and claims accordingly, the mayor shall examine into the claim, and on its being established the claimant shall be admitted and enrolled by the town clerk on the Freemen's Roll.

Reservation of Rights of Property to Freemen and Others.

205.—(1.) Every person who had before the passing of the Municipal Corporations Act, 1835, been admitted a freeman, or if that Act had not been passed might have been so admitted otherwise than by gift or purchase, and

(2.) Every person who for the time being is—

(*a.*) An inhabitant of a borough, or

(*b.*) Wife, widow, son, or daughter of a freeman, or

(*c.*) Husband of a daughter or widow of a freeman, or

(*d.*) Bound an apprentice,—

shall, subject to the provisions of this Part, have and enjoy and be entitled to acquire and enjoy the same share and benefit of the hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any property held in whole or in part for any charitable uses or trusts, as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

See *Prestney* v. *Mayor, &c., of Colchester*, L. R., 21 Ch. D. 111.

Limit of Value and Saving as to Conditions Precedent.

206.—(1.) The total amount to be divided among the persons whose rights are by the last foregoing section

reserved shall not exceed the surplus remaining after payment of the interest of all lawful debts chargeable on the property out of which the sums so to be divided have arisen, together with the salaries of municipal officers and all other lawful expenses which, on the fifth of June, one thousand eight hundred and thirty-five, were defrayed out of or chargeable on the same.

(2.) Where, if the Municipal Corporations Act, 1835, or this Act, had not been passed, any such person would have been liable by statute, byelaw, charter, or custom, to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant thereof, in consideration of his freedom, or of his or her title to those reserved rights, or there was any condition precedent to any person being entitled to those rights, he or she shall not have any benefit in respect of those rights until he or she has paid that fine, fee or sum to the treasurer on account of the borough fund, or has fulfilled that condition, as far as it is capable of being fulfilled according to the provisions of this Act.

Saving for Power to Question Right.

207. Nothing in this Act shall strengthen or confirm any claim, right, or title of any freeman or of any person to the benefit of any right in this Part reserved, but the same may in every case be brought in question, impeached, and set aside, as if this Act had not been passed.

Reservation of Beneficial Exemptions to Freemen and Others.

208.—(1.) Nothing before in this Part contained shall apply to any claim, right, or title of a freeman or of any person to any discharge or exemption from any tolls or dues levied wholly or in part by or for the use or benefit of any borough or body corporate.

(2.) No person shall have any such discharge or exemption except a person who, on the fifth of June, one thousand eight hundred and thirty-five, was an inhabitant, or was admitted or entitled to be admitted a freeman, or was the wife, widow, son, or daughter of a freeman, or was bound an apprentice ; and every such person shall be entitled to the same discharge or exemption as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

(3.) But nothing in this Act shall affect the right of any person claiming such discharge or exemption otherwise than as inhabitant or freeman, or member of a municipal corporation, or widow or kin of such an inhabitant, freeman, or member.

Reservation of Parliamentary Franchise, &c.

209.—(1.) Every person who, if the Municipal Corporations Act, 1835, had not been passed, would have enjoyed, as a freeman, or might thereafter have acquired in respect of birth or servitude, as a freeman, the right of voting in a parliamentary election, shall be entitled to enjoy or acquire that right as if that Act or this Act had not been passed.

(2.) No stamp duty shall be chargeable on the admission of any person as a freeman in respect of birth or servitude in a parliamentary borough.

(3.) The town clerk shall do all things appertaining by law to the registration of freemen for parliamentary elections.

PART XI.

GRANT OF CHARTERS.

Power to Crown in granting Charter to Borough to extend to it the provisions of the Municipal Corporations Acts.

210. If on the petition to the Queen of the inhabitant householders of any town or towns or district in England, or of any of those inhabitants, praying for the grant of a charter of incorporation, Her Majesty, by the advice of Her Privy Council, thinks fit by charter to create such town, towns, or district, or any part thereof specified in the charter, with or without any adjoining place, a municipal borough, and to incorporate the inhabitants thereof, it shall be lawful for Her Majesty by the charter to extend to that municipal borough and the inhabitants thereof so incorporated the provisions of the Municipal Corporation Acts.

The term "Municipal Corporations Acts" is defined by sec. 7 as "this Act, and any Act to be passed amending this Act."

Reference to Committee of Council, and Notice of Petition for Charter.

211.—(1.) Every petition for a charter under this Act shall be referred to a Committee of the Lords of Her Majesty's Privy Council (in this Part called the Committee of Council).

(2.) One month at least before the petition is taken into consideration by the Committee of Council, notice thereof and of the time when it will be so taken into consideration shall be published in the London Gazette, and otherwise in such manner as the Committee direct for the purpose of making it known to all persons interested.

The committee of council, if they think fit, may require the draft of a proposed scheme on grant of new charter to be submitted to them either together with the petition for a charter or at any subsequent period. The draft of the proposed scheme is to be published by advertisement, or placards, or handbills, or otherwise as the committee of council think best calculated for giving notice to all persons interested, and before settling the scheme the committee of council are to consider any objections which may be made thereto by any local authority or persons affected thereby. See Seventh Schedule, p 231.

Power by Charter to settle Wards, and by fixing Dates and otherwise to adapt the Municipal Corporations Acts to First Constitution of New Borough.

212.—(1.) Where Her Majesty by a charter extends the Municipal Corporations Acts to a municipal borough it shall be lawful for Her Majesty, by the charter, to do all or any of the following things:

(*a.*) To fix the number of councillors, and to fix the number and boundaries of the wards (if any), and to assign the number of councillors to each ward; and

(*b.*) To fix the years days and times for the retirement of the first aldermen and councillors; and

(*c.*) To fix such days times and places, and nominate such persons to perform such duties, and make such other temporary modifications of the Municipal Corporations Acts, as may appear to Her Majesty to be necessary or proper for making those Acts applicable in the case of the first constitution of a municipal borough.

(2.) The years days times and places fixed by the charter, and the persons nominated therein to perform any duties, shall, as regards the borough named in the charter, be

respectively substituted in the Municipal Corporations Acts for the years, days, times, places, officers, and persons therein mentioned, and the persons so nominated shall have the like powers, and be subject to the like obligations and penalties, as the officers and persons mentioned in those Acts for whom they are respectively substituted.

(3.) Subject to the provisions of the charter authorized by this section, the Municipal Corporations Acts shall, on the charter coming into effect, apply to the municipal borough to which they are extended by the charter; and, where the first mayor aldermen and councillors, or any of them are named in the charter, shall apply as if they were elected under the Municipal Corporations Acts, and, where they are not so named, shall apply to their first election.

Scheme or continuance or abolition of and adjustment of rights of existing Local Authority and Officers.

213.—(1.) Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporations Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority, whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority.

(2.) The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition total or partial of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to the Committee of Council to be necessary or proper for

fully carrying into effect any such adjustment and provisions as aforesaid.

(3.) The scheme, when settled by the Committee of Council, shall be published in the London Gazette, and shall not be of any effect unless confirmed as hereinafter mentioned.

(4.) Where, within one month after the publication of the scheme in the London Gazette, a petition against it by any local authority affected thereby, or by not less than one-twentieth of the owners and ratepayers of the borough (such twentieth to be one-twentieth in number of the owners and ratepayers of the borough, taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the borough) the owners and ratepayers in all cases to include women not under coverture has been received by the Committee of Council, and is not withdrawn, the scheme shall require the confirmation of Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the Committee of Council may, if they think fit, submit the scheme for confirmation, either to Parliament or to Her Majesty in Council, and in the latter case it shall be lawful for Her Majesty to confirm the scheme by Order in Council.

(5.) A scheme, when confirmed by Parliament or by Order in Council, shall have full operation with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act.

(6.) A local authority for the purposes of this Part means a sanitary authority (not being the mayor, aldermen, and burgesses of a borough subject to the Municipal Corporations Acts), also the corporation of a borough not subject to the Municipal Corporations Acts, a burial board, trustees, commissioners or other persons who, as a public body and not for their own profit, act under any Act for paving, lighting, supplying with water or gas, cleansing, watching, regulating or improving any town or place, or for providing or maintaining a cemetery or market in or for any town or place, and any commissioners, trustees, or other persons (not being justices) maintaining any police force, and any other authority not in this section excepted, and not being a school board, and having powers of local government and of rating for public purposes.

(7.) The district of a local authority for the purposes of this section means the area within which such authority can exercise any powers or rights.

For definition of "local authority" see sub-section 6 of this section; and for definition of "district of local authority," see sub-section 7.

As to procedure for scheme on grant of new charter, see Seventh Schedule, p. 231.

The scheme, when settled, besides being published in the London Gazette, is to be published by advertisement, or placard, or handbills, or otherwise as the committee of council think best calculated for giving notice thereof to all persons interested.

Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme. Before the Bill is introduced the Committee of Council may alter the scheme as they think proper. If, while the Bill is pending in either House of Parliament, a petition is presented against the Bill, so far as it relates to such scheme, the scheme may be referred to a select committee, and the petitioner is to be allowed to appear and oppose, as in the case of a private Bill.

According to the provision in the Seventh Schedule, p. 231, a scheme is to come into operation at the date of its confirmation, or any later date mentioned in the scheme.

Supplemental Provisions as to Scheme and Charter.

214.—(1.) A scheme shall, before being settled by the Committee of Council, be referred for consideration to the Secretary of State and the Local Government Board, and, if and as far as it is intended to affect any authority which is a harbour authority within the meaning of the Harbours and Passing Tolls, &c. Act, 1861, to the Board of Trade.

(2.) A scheme shall in every case provide for placing the new borough within the jurisdiction of the council as the sanitary authority.

(3.) The regulations contained in the Seventh Schedule with respect to the scheme shall be observed.[1]

(4.) If the Committee of Council are satisfied that a local authority[2] or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order those costs to be so paid, and they should be paid accordingly.

[1] For regulations referred to, see Seventh Schedule, p. 231.
[2] For definition of the term "local authority," see sec. 213 (6).

Provision as to Police Force in New Borough.

215. Nothing in any scheme or in the Municipal Corporations Acts shall authorize the establishment in a borough to which a charter is granted under this Act of a new separate police force not consolidated with the county police force, unless the district incorporated by the charter contained twenty thousand inhabitants or upwards, according to the census taken next before the date of the incorporation.

Validity of Charters.

216.—(1.) A charter creating a municipal borough which purports to be granted in pursuance of the royal prerogative and in pursuance of or in accordance with this Act, shall after acceptance be deemed to be valid and within the powers of this Act and Her Majesty's prerogative and shall not be questioned in any legal proceeding whatever.

(2.) Every such charter shall be laid before both Houses of Parliament within one month after it is granted, if Parliament is then sitting, or if not, within one month after the beginning of the then next sitting of Parliament.

It is also provided by Rule 9 in the Seventh Schedule, that the confirmation of a scheme on grant of new charter shall be conclusive evidence that all the requirements of the Act with respect to the proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

Power to Settle Scheme in case of Recent Charters.

217. Where a charter was granted to a borough within seven years before the fourteenth of August, one thousand eight hundred and seventy-seven, the Committee of Council, on the petition to the Queen of the council of the borough, or of any existing local authority whose district comprises the whole or any part of the area of the borough, either with or without any adjoining or other place, may settle a scheme under this Act in like manner as if the petition for the grant of a charter to the borough had been referred to the Committee of Council after the commencement of this Act, and the provisions of this Act with respect to a scheme shall apply accordingly, with the necessary modifications; and if within one month after the publication of the scheme

in the London Gazette a petition against the scheme from the council of the borough has been received by the Committee of Council and is not withdrawn the scheme shall require the confirmation of Parliament.

For definition of "local authority" and "district" of a local authority, see sec. 213 (6) (7).

With regard to the provisions of this Act with respect to a scheme, see secs. 213, 214, and 215, and Schedule VII. to the Act p. 231.

Power to Amend Scheme.

218.—(1.) Where a scheme for a borough has been confirmed under this Part, or any former enactment, and the municipal corporation of the borough or one-twentieth of the owners and ratepayers of the borough (estimated as in this Part mentioned), or a local authority affected by the scheme, petition the Queen for an amending scheme, the petition shall be referred to a Committee of the Lords of Her Majesty's Privy Council (included in the term the Committee of Council in this Part), and shall be proceeded on, and this Part shall apply thereto, as nearly as may be, as if the same were a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated.

(2.) The Committee of Council, if they think fit to submit the amending scheme for confirmation, shall submit the same to Parliament, or they may submit the same to Her Majesty in Council, if the original scheme was confirmed by Order in Council; and in the latter case it shall be lawful for Her Majesty to confirm the amending scheme by Order in Council.

(3.) An amending scheme, when confirmed by Parliament, or by Order in Council, as the case may require, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the amending scheme were part of this Act.

The "one-twentieth of the owners and ratepayers of the borough" is to be construed as meaning one-twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the borough, the owners and ratepayers in all cases to include women not under coverture. (See sec. 213 (4)).

For definition of the term "local authority," see sec. 213 (6).

With regard to the proceedings in the case of a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated, see secs. 211-215. See also regulations in Seventh Schedule, p. 231.

As to confirmation by Parliament of a scheme, see Rules 5 to 9 in Seventh Schedule.

PART XII.

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Fines.

219.—(1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence.

(2.) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions.

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.

Exclusion of Certiorari.

220. A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by certiorari or otherwise into the High Court.

In *R.* v. *Justices of Ripon*, 7 A. & E. 417, it was held that sec. 132 of the Municipal Corporations Act, 1835, which was in similar terms to this section, precluded an order of the quarter sessions of a borough with reference to an appeal against a borough rate being removed by *certiorari*.

As to the removal into the Queen's Bench Division of the High Court, by *certiorari* of an order of the council for payment of money out of the borough fund, see sec. 141, p. 124, and cases referred to in the notes on that section.

Application of Penalties in Quarter Sessions Boroughs.

221.—(1.) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough.

(2.) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

(*a.*) Directs payment thereof to the informer or to any person aggrieved; or

(*b.*) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or

(*c.*) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

In *Mayor of Reigate, &c.* v. *Hart*, L. R., 3 Q. B. 244; 37 L. J., M. C. 70; 16 W. R. 896, the borough had no separate commission of the peace and no court of quarter sessions. The mayor and ex-mayor acted as justices in the borough, and the justices of the county at large had concurrent jurisdiction. It was held that the mayor and ex-mayor acted in and for the borough as county justices with their powers limited to a special locality, and that the penalties imposed by justices acting in and for the borough were to be paid to the treasurer of the county and not the treasurer of the borough. Blackburn, J.: The county justices are the justices who do the work, and the county bears the cost of the prosecution, and when there is an appeal from the conviction, it would be to the court of quarter sessions for the county, and the expenses would be defrayed from the county rate. The intention of the legislature would be that the penalties should be paid into the fund which bore the expenses of the prosecution; otherwise the borough fund would receive the benefit, and the county fund would have to bear the burden.

In *Winn* v. *Mossman*, L. R., 4 Ex. 292; 38 L. J., Ex. 200; 20 L. T., N.S. 672; 17 W. R. 924; it was held that where justices of a borough, which has a separate commission of the peace but not a separate court of quarter sessions, in the exercise of their summary jurisdiction impose penalties for offences against the general law, they act for the county, and the penalties must be paid over by their clerk to the treasurer of the county or place to the quarter sessions of which the appeal from their decision lies. The fact that the borough has a separate commission of the peace makes no difference.

In *Attorney-General* v. *Moore*, L. R., 3 Ex. D. 276; 47 L. J., M. C. 33, 103; 37 L. T., N.S. 610; 38 L. T., N.S. 251; 26 W. R. 238, 366, it was held that, notwithstanding the provision in sec. 16 of the 3 & 4 Vict., c. 97 (an Act for regulating railways), that certain offenders might be taken before a justice of the peace and convicted summarily, and should thereupon forfeit to her Majesty a sum not exceeding £5, a fine imposed on a conviction under that Act by justices in a borough having a separate quarter sessions was payable to the borough treasurer. Bramwell, L. J.: The Municipal Corporations Act contemplated that by future legislation penalties would be imposed payable to the Crown, and that this subsequent legislation would not discriminate between boroughs having q arter sessions upon the one hand and boroughs not having quarter sessions and counties upon the other. It therefore provided that whereever by a future statute a penalty was rendered recoverable before justices of the peace, it should, as a general rule, be paid over to the borough fund, if the conviction takes place in a borough having a separate court of quarter sessions

The Public Stores Act, 1875 (38 & 39 Vict., c. 25), by sec. 15, provides that "pecuniary penalty or other money recovered under this Act in relation to any stores, shall, in such manner as the Treasury from time to time direct, be paid into the receipt of the Exchequer, and carried to the Consolidated Fund; and this section shall supersede any enactment to the contrary contained in any Act relating to municipal corporations." Penalties under the Army Discipline and

Regulation Act, 1859 (42 & 43 Vict., c. 33, s. 159), are "notwithstanding anything contained in any other Act," to be paid into the Exchequer.

In *Seamen's Hospital Society* v. *Mayor, &c. of Liverpool*, 4 Exch. 180; 18 L. J., Ex. 371; it was held that the Merchant Seamen's Act (7 & 8 Vict., c. 112), was an Act relating to "trade or navigation," and that the penalties recovered under that Act were payable under sec. 62, to the Seamen's Hospital Society, and not to be paid to the treasurer of the borough. Section 62 enacted that "all penalties and forfeitures mentioned therein for which no specific application is therein-before provided, shall, when recovered, be paid and applied in manner following, that is to say; so much thereof as the court or convicting justice or justices shall determine, but not exceeding one moiety, shall be paid to the informer or person on whose discovery or information the same shall be recovered, and the residue shall be paid to the Seamen's Hospital Society."

With regard to costs and penalties, see also sec. 6 of the Justices' Clerks' Act, 1877 (40 & 41 Vict., c. 43), which provides that all penalties, costs, and sums which, in pursuance of a conviction or order by a justice or justices of the peace, are paid to a clerk of a petty sessional division, or a clerk of special sessions, or a clerk of petty sessions, or a clerk of any justice or justices of the peace, and are not actually paid by him to the party or parties by law entitled thereto, other than the treasurer herein-after mentioned, shall be paid to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices acted, subject, nevertheless, to be paid by such treasurer to any party showing himself to be by law entitled thereto. Every such clerk shall account for and pay over all penalties, costs, and sums payable to any such treasurer under this or any other Act, at such times and in such manner as may be, from time to time, directed by the justices or council who appointed that treasurer, and if he wilfully omits to account for or pay over any such penalty, costs, or sum, he shall forfeit for every such omission £20, to be recovered by action of debt by any person who may sue for the same.

Duties of Clerk of Peace as to Fines and Forfeitures.

222. Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, "for the more speedy return and levying of fines, penalties, and forfeitures, and recognisances estreated;" and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

Service of Summons or Warrant.

223. Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles from the borough, and, within those limits,

shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed.

The warrants herein referred to do not include a warrant of commitment. See *R.* v. *Compton*, L. R., 5 Q. B. D. 341 ; 49 L. J., M. C. 41 ; 28 W. R. 539.
As to the measurement of the distance of seven miles, see sec. 231.

Procedure in Penal Actions against Corporate Officers.

224.—(1.) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose.

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(3.) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4.) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

For definition of "corporate office," see sec. 7, p. 3 ; and for penalty on unqualified person acting in office, see sec. 41, p. 45.
See *Simpson* v. *Reedy*, 12 M. & W. 736 ; 13 L. J., Ex. 193, in which a question was raised whether it was essential that in the declaration in an action of debt to recover the penalty, it should be distinctly stated that the plaintiff was a burgess of the borough.
With regard to qualification in respect of estate, see sec. 11, p. 15.

Quo Warranto and Mandamus.

225. (1.) An application for an information in the nature of a *quo warranto* against any person claiming to hold a corporate office shall not be made after the expira-

tion of twelve months from the time when he became disqualified after election.

(2.) In the case of such an application, or of an application for a *mandamus* to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified for making the application.

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4.) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the rule for the information or *mandamus* absolute.

(7.) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.

(8.) The court may, if it thinks fit, direct that any writ of *mandamus* issued shall be peremptory in the first instance.

For definition of the term "corporate office," see sec. 7.

It will be observed from sec. 87, p. 73, that a municipal election cannot be questioned on any of the grounds specified in that section except by an election petition. The provision in this section with regard to *quo warranto* must, therefore, apply to the case of a person who has been duly elected to a corporate office, and who, after election, becomes disqualified.

It is in the discretion of the court whether they will grant a rule for an information in the nature of a *quo warranto* (*R.* v. *Trevennen*, 2 B. & A. 479; *R.* v. *Parry*, 6 A. & E. 810; 2 N. & P. 414), and when an application for an information is contemplated, there should be no undue delay in applying to the court.

On a motion for a *quo warranto* information against a town councillor, it is not a valid objection to the relator that he is not a burgess of the borough. His interest is sufficient if he is subject to the government of the council as an inhabitant. See *R.* v. *Hodge*, 2 B. & Al. 344 (note); *R.* v. *Parry*, 6 A. & E. 810; *R.* v. *Quayle*, 11 A. & E. 508; 5 Jur., 386.

In *R.* v. *Thirlwind*, 33 L. J., Q. B. 171; 10 Jur., N.S. 206; 9 L. T. 731, the affidavit of the person who stated that the application for the rule was made at the instance of him as relator, commenced, "I, *A. B.*, of Bolton, tailor," and contained no other statement to show that he was an inhabitant of the borough, and did not show that he was a burgess or otherwise had any distinct interest in the matter of the application. The rule was discharged. Crompton J.: The affidavit is insufficient. For all that appears in it the proposed relator

may be only a journeyman tailor, not a householder, but living in his father's house.

See also sec. 73, p. 64, and *ex parte Birkbeck* and other cases referred to in the notes to that section.

Although after the expiration of twelve months from the time of the alleged disqualification, no application for an information in the nature of a *quo warranto* can be made, the person, if he acts without being qualified, will not be protected from a penal action under sec. 224 to recover a fine.

With regard to *mandamus* where an office is *de facto* full, see p. 16, and the cases there referred to. See also *R.* v. *Mayor, &c. of Winchester*, 2 N. & P. 274; 7 A. & E. 215.

Provisions for Protection of Persons acting under Act.

226.—(1.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2.) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.

With regard to the word "person," see sec. 7, p. 4, which enacts that "person" includes "a body of persons corporate or unincorporate."

Section 135 of the Municipal Corporations Act, 1835, on which this section is based, referred to "actions and prosecutions to be commenced against any person for anything done in pursuance of this Act." This section, it will be observed, is wider in its terms, as it refers to "an action prosecution or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act." In the memorandum which prefaced the Bill as brought in, it was stated that the words relating to alleged neglect or default were inserted with reference to *R.* v. *Burrell*, 12 A. & E. 460. In that case (see note to sec. 75, p. 66), in an action against an overseer for not signing a burgess list, it was held that a notice of action was not necessary, as sec. 135 of the Municipal Corporations Act only required such notice in actions for anything done in pursuance of the Act, whilst the offence was an omission or neglect to do something required by that Act.

The clause in other particulars differs from sec. 135 of the Municipal Corporations Act, the variations adapting it to modern procedure.

As to the application of the section to actions of *replevin*, see *Jones* v. *Johnson*, 6 Exch. 133. Pollock, C.B.: The question is, whether we are to decide that because the provision with respect to notice of action does not apply to an action of *replevin*, therefore that action is to be wholly taken out of the operation of the section, or whether we are to say that the provisions of the section are to apply to all actions so far as they are found to be applicable. I think the latter is the true construction, both as being a grammatical one and also as being one which is the most reasonable and beneficial.

Power for Borough Constables to take Bail.

227.—(1.) Where a person charged with a petty misdemeanour is brought, without the warrant of a justice, into the custody of a borough constable during his attendance at a watch-house in the borough, at any time (by day or night) at which a justice is not actually sitting for the public administration of justice at the justices' room, or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognisance conditioned for his appearance for examination within two days before a justice in the borough at some time and place therein specified.

(2.) A recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if taken before a justice.

(3.) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognisance, and of his surety or sureties, if any, with the condition of the recognisance, and the sums acknowledged.

(4.) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear.

(5.) If the recognisor does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up and signed by the constable, and shall return the same to the next court of quarter sessions for the borough, or, if the borough has no separate court of quarter sessions, for the county in which the borough is situate, with a certificate at the back thereof, signed by the justice, that the recognisor has not complied with the obligation therein contained.

(6.) The clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in quarter sessions.

(7.) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognisance to such further time as he appoints.

(8.) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognisance for his appearance before a justice shall be discharged without fee.

PART XIII.

GENERAL.

BOUNDARIES.

Boundaries of Boroughs and Transfer of Parts to Counties.

228.—(1.) Every place at the commencement of this Act included within each borough then existing, and no other place, shall be part of the borough, and in each borough then existing which is a county of itself, shall be part of that county and of no other, as if this Act had not been passed.

(2.) Where under the Municipal Corporations Act, 1835, or any Act amending it, any such county or borough does not, at the commencement of this Act, include a place which, before the passing of the Municipal Corporations Act, 1835, was part thereof, that place shall continue to be part of the county wherein it is situate, or with which it

has the longest common boundary, as if this Act had not been passed.

(3.) But nothing in this Act shall prevent any gaol, house of correction, lunatic asylum, court of justice, or judges' lodging, which at the passing of the Municipal Corporations Act, 1835, was, and at the commencement of this Act is, taken to be, for any purpose, in any county, from being still, for that purpose, taken to be in that county, as if this Act had not been passed.

(4.) Any gaol, court, depôt for arms, and any land thereto belonging, which at the commencement of this Act is parcel of a county shall continue to be parcel of the county, and under the exclusive jurisdiction of the authorities of the county, as if this Act had not been passed.

(5.) Nothing in this Act shall be construed to affect the assessments of the land tax or assessed taxes, as those assessments exist at the commencement of this Act, or to extend or diminish the jurisdiction of any commissioners of those taxes, as such commissioners then exist; but all lands, and all parishes, parts of parishes, and places shall continue to be charged as at the commencement of this Act towards the land tax charged on the county or other district whereof at the commencement of this Act they are part, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as if this Act had not been passed.

Schedules A. & B. to the Municipal Corporations Act, 1835, named the boroughs to which the Act immediately applied and those which were to have a separate commission of the peace. These Schedules also related to boundaries. In the memorandum which prefaced the Bill as brought in, it was stated, "as regards some of the boroughs named, the parliamentary boundaries were to be also the municipal boundaries until altered by Parliament; as regards the rest, the existing municipal boundaries were to continue until altered by Parliament. This distinction is not reproduced, the boundaries of the several boroughs not being matters of a public nature, and the prescribed boundaries having been, in many instances, altered since 1835." The now existing boundaries of boroughs will not be affected by the Act under this section and sec. 250.

Adjustment between Boroughs and Counties on change of Boundaries.

229. If any place which under the Municipal Corporations Act, 1835, or any Act amending it, ceased to be included in a borough or county of a town or city was before the passing of the Municipal Corporations Act,

1835, liable to contribute to any rate for satisfying any lawful debt to which the ratepayers of that borough or county were then liable, and if after the commencement of this Act any difference arises concerning the proportion of that debt to be contributed in respect of that place, the Secretary of State, on the application of the council, or of the chairman of a public meeting of the ratepayers of the place, may appoint by writing under his hand a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion aforesaid, if any; and the arbitrator shall assess the costs of the arbitration, and direct by whom and in what proportion and out of what fund they shall be paid; and the rate aforesaid shall continue to be levied by warrant of the council and to be paid by the place aforesaid to the treasurer of the borough, as if the Municipal Corporations Act, 1835, or any Act amending it, or this Act, had not been passed, until the proportion aforesaid is satisfied, and no longer.

By the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict., c. 61), power is given to the Local Government Board to constitute separate parishes out of a divided parish, or for amalgamating some of the parts of a divided parish with the parish or parishes in which the same may be locally included or to which they may be annexed. Section 4 provides that nothing herein-contained shall alter the boundaries of a municipal borough, and for the purposes of the election of members of Parliament and of burgesses in municipal boroughs the parishes shall continue to be deemed unaltered until new lists are made.

In *Foster and others* v. *Medwin and another*, L. R., 5 C. P. D. 87; 49 L. J., C. P. 297; 42 L. T., N.S. 254; 28 W. R. 660, it appeared that in the year 1878, an isolated portion of the parish of Sullington, which had prior to that date formed part of the borough of New Shoreham, was, by order of the Local Government Board, made part of the parish of Horsham. By the Boundary Act (2 & 3 Wm. 4, c. 45), the borough of Horsham was defined to be the parish of Horsham. It was held (on a case stated by the revising barrister) that voters who resided in the isolated portion of Sullington which had been made part of the parish of Horsham, were not entitled to vote for the borough of Horsham, but for the borough of New Shoreham, and that the order of the Local Government Board under the Act referred to did not affect the parliamentary franchise in the parish or part of a parish dealt with by the order.

TIME.

Computation of Time.

230.—(1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the

computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day ; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

The case of *Howes and Pierce* v. *Turner and Wright*, L. R., 1 C. P. D. 670; 45 L. J., C. P. 550; 35 L. T., N.S. 58, which had reference to the Municipal Elections Act, 1875 (38 & 39 Vict., c. 40), may be referred to with regard to the question as to the validity of an election where there has been an inaccurate computation of time. In that case it appeared that the town clerk of N. issued a notice stating that the last day for the delivery of nomination papers was Saturday, the 23rd of October. The 23rd of October only allowed six days (exclusive of Sunday and the days of nomination and election) to intervene between the nomination day and the day of election. Sub-sec. 3 of sec. 1 of the 38 & 39 Vict., c. 40, provided that every nomination paper should be delivered "seven days at least before the day of election;" and sec. 11 enacted that "in reckoning time for the purposes of the Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public holiday, fast, or public thanksgiving shall be excluded." It was held that "seven days" meant seven clear days exclusive of the nomination day and the day of election as well as of Sunday. H. and P. were nominated, the nomination papers being delivered to the Town Clerk on the 22nd of October. W. was also nominated on the 22nd of October, but on the same day he obtained the nomination paper from one of the clerks of the town clerk without the sanction or knowledge of the town clerk, for the purpose of getting one of his proposers who had signed his Christian name as "Fredk." instead of Frederick, to sign it in full. The nomination paper having been signed in full, W. delivered the nomination paper at the town clerk's office on the 23rd of October. T. was also nominated, the nomination paper being delivered on the 23rd of October. The Mayor, on the 25th October, disallowed objections which were made to the nominations of W. and T. on the ground that the nomination papers had not been delivered in time. It was held that the nomination paper of W. must be taken to have been delivered on Friday the 22nd of October, and was therefore in time, the taking it away for an unnecessary alteration not being done with intent to with-

draw it; and that the nomination paper of T., although delivered in accordance with the terms of the notice issued by the town clerk, was delivered too late; and that as the notice published by the town clerk was so defective as to mislead one of the candidates, and thus prevent a fair election, the whole proceeding must be deemed void and a new election ordered.

DISTANCE.

Measurement of Distances.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

NOTICES.

Notices on Town Hall.

232. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

INSPECTION AND COPIES.

Inspection of Documents.

233.—(1.) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom.

(2.) A burgess may make a copy of or take an extract from an order of the council for the payment of money.

(3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

(5.) The Freemen's Roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy.

(6.) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7.) If a person having the custody of any document in this section mentioned,—

(*a.*) Obstructs any person authorized to inspect the same in making such inspection thereof as in this section mentioned; or

(*b.*) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

As to the penalty for an overseer or town clerk refusing to allow a parish burgess list or list of claimants or respondents to be inspected by a person having a right thereto, see sec. 75, p. 65. With regard to the inspection of these lists, see Rules 2 and 8 in Third Schedule. See pp. 216, 218.

FEES.

Tables of Fees to be Posted.

234. The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorized to be taken by the clerk of the peace (if any) for the borough, by the clerk to the justices (if any) for the borough, and by the registrar and officers of the borough civil court (if any), to be posted conspicuously in the following places:

(*a.*) The room where the business of the town clerk's office is transacted;

(*b.*) The room, if any, where the justices of the borough sit for transacting their business;

(*c.*) The room, if any, where the court of quarter sessions of the borough is held; and

(*d.*) The room, if any, where the borough civil court is held.

SEALS AND SIGNATURES.

Forgery.

235. If any person forges the seal or signature affixed or subscribed to a byelaw made under this Act, or the

signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

APPLICATIONS TO TREASURY.

Notice of Application to and Correspondence with Treasury.

236.—(1.) Where the council intend to apply to the Treasury for their approval of any sale, loan, or other financial arrangement under this Act notice of the intention to make the application shall be fixed on the town hall one month at least before the application, and a copy of the intended application shall during that month be kept in the town clerk's office, and be open to public inspection.

(2.) If the Treasury either refuse their approval or grant it conditionally or under qualifications, notice of the correspondence between the Treasury and the council shall forthwith and during one month be fixed on the town hall, and a copy of the correspondence shall during that month be kept in the town clerk's office, and be open to public inspection.

As to fixing notices on the town hall, see sec. 232.
With respect to documents to be open to inspection, see sec. 233.

DEPUTY.

Acts of Deputy not to be invalidated by defect in Appointment.

237. No defect in the appointment of a deputy under this Act shall invalidate his acts.

OVERSEERS.

Notices to and acting of Overseers.

238.—(1.) Every matter by the Municipal Corporations Acts directed to be done by overseers may be lawfully done by the major part of them.

(2.) Any notice by the Municipal Corporations Acts required to be given to overseers may be delivered to any one

of them, or left at his place of abode, or at his office for transacting parochial business.

As to churchwardens being *ex-officio* overseers, see sec. 7, pp. 3 and 4.

DECLARATIONS AND OATHS.

Power to administer Oaths, &c.

239.—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2.) Nothing in this Act in any case shall require or authorize the taking or making of any oath or declaration that would not have been required or authorized under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868.

As to the declarations to be made under this Act by persons elected to corporate offices, see sec. 35; by borough justices, sec. 157; by recorders, sec. 163; and by special constables, sec. 196.

With regard to oaths to be taken by borough justices, see sec. 157, and by recorders, sec. 163.

As to the provisions of the Promissory Oaths Act, 1868 (31 & 32 Vict., c. 72), and the amending Act (34 & 35 Vict., c. 48), see note to sec. 157, p. 142. By the latter Act it is provided with regard to the officers who, under the Promissory Oaths Act, are to take the oath of allegiance and the official oath, that "each such officer shall take the said oaths before such persons as Her Majesty may from time to time appoint, or in England before the Lord High Chancellor of Great Britain, or in the Court of Chancery, Queen's Bench, Common Pleas or Exchequer, in open court, before one or more of the judges of such court, or in open court at the general or quarter sessions of the peace for the county, borough, or place in which the person taking the oaths acts as justice." In a circular letter addressed to town clerks by the Home Office, in November, 1871, it was stated that Her Majesty had been pleased, under the authority of the section referred to, to appoint that such oaths as it was necessary should be taken by mayors to qualify them to act as borough justices might be taken by any mayor before any two justices of the peace of the borough of which he was mayor, or if there were no justices, then before any two councillors of the borough.

FORMS.

Forms in Schedule.

240. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

For Eighth Schedule, see p. 233. The Forms included in the Schedule are as follows:—Forms of declaration on accepting office (declaration on acceptance of corporate office, and declaration by recorder or borough justice); forms relating to elections (list of burgesses, notice of claim, list of claimants, list of persons objected to, notice of election, and ballot papers); forms relating to working men's dwellings (form of grant, transfer of grant, lease by corporation and assignment of lease); and forms relating to borough bridges (form of mortgage and transfer of mortgage).

MISNOMER OR INACCURATE DESCRIPTION.

Misnomer or Inaccurate Description not to hinder.

241. No misnomer or inaccurate description of any person, body corporate, or place named in any Schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood.

As to misnomers, &c., see *R.* v. *Bradley*, *R.* v. *Plenty*, *R.* v. *Avery*, *R.* v. *Drighton*, *R.* v. *Hammond*, *R.* v. *Coward*, *R.* v. *Tugwell*, and other cases referred to in note to sec. 60, p. 58. See also note to Rule V. in Third Schedule, p. 223.

SUBSTITUTION IN FORMER ACTS.

Provision for References in Unrepealed Enactments to 5 & 6 Will. 4, c. 76.

242.—(1.) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2.) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in connexion therewith, such provision of this Act as is also mentioned in connexion therewith.

(3.) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any

Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4.) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

For Ninth Schedule, see p. 243, and for First Schedule, see p. 207.

Short Titles of Acts partly Repealed.

243. Such of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned.

For First Schedule, see p. 207.

RETURNING OFFICERS AT PARLIAMENTARY ELECTIONS.

Mayor of certain Boroughs to be Returning Officer in Parliamentary Elections.

244.—(1.) In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections; but this provision shall not extend to the borough of Berwick-upon-Tweed.

(2.) If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer.

(3.) If when a mayor is required to act as returning officer the mayor is absent, or incapable of acting, or there is no mayor, the council shall forthwith choose an alderman to be returning officer.

DISFRANCHISED PARLIAMENTARY BOROUGHS.

30 & 31 *Vict.*, *c.* 102.

Electors in Disfranchised Boroughs.

245. Where a borough has, in pursuance of the Representation of the People Act, 1867, or of any Act passed in

the session of the thirty-first and thirty-second years of the reign of Her Majesty, ceased to return a member to serve in Parliament, and the persons entitled to vote for the member or members formerly returned by the borough were by law electors for any other purpose, the burgesses of the borough shall be electors for that purpose, and shall in all respects, as regards that purpose, be substituted for the persons so entitled to vote.

LICENSING.

Explanation of terms "Town Corporate," &c., in Licensing Act.

246. In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, "to regulate the granting of licences to keepers of inns, alehouses, and victualling houses in England," the expressions "town corporate," "county or place," and "division or place," include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough direct their precept under that Act.

FREEDOM OF TRADING.

Right of Free Trading in Boroughs.

247. Notwithstanding any custom or byelaw, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.

As to the saving of byelaws made or pending or in the course of being made under the Municipal Corporations Act, 1835, see sec. 260 (3).
See also secs. 23 and 24, pp. 30-32, as to byelaws.

CINQUE PORTS.

Special Provisions as to certain of the Cinque Ports.

248.—(1.) The boroughs of Hastings, Sandwich, Dover, Hythe, being four of the Cinque Ports, and the borough of Rye, are in this section referred to as the five boroughs.

(2.) The jurisdiction, powers, and authorities of the court of quarter sessions, recorder, coroner, and clerk of the peace for each of the five boroughs shall extend to the non-corporate members and liberties thereof, and to such corporate members thereof as have not a separate court of quarter sessions.

(3.) The jurisdiction, powers, and authorities of the persons constituted justices within and throughout the liberties of the Cinque Ports by virtue of their commission, shall extend to all places being within the limits of the five boroughs or of their members or liberties, corporate or non-corporate, and not being within the limits of a borough having a separate commission of the peace.

(4.) The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licences or authorities to persons to keep inns, alehouses, or victualling houses, or to sell exciseable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively not being within the limits of a borough having a separate commission of the peace.

(5.) The non-corporate members and liberties of the five boroughs, and such corporate members thereof as have not a separate court of quarter sessions, shall be charged by the respective courts of quarter sessions of the five boroughs with a due proportion of all those expenses of the five boroughs, to the payment whereof rates in the nature of county rates are applicable; and such rates may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the Municipal Corporations Act, 1835, under any enactment then in force, but subject to the operation of any subsequent enactment affecting the same.

(6.) A due proportion of inhabitant householders to serve as grand jurors and jurors at the respective courts of quarter sessions of the five boroughs shall be summoned by the clerks of the peace thereof from the non-corporate members and liberties thereof, and such corporate members thereof as have not a separate court of quarter sessions; and the attendance of such jurors shall be enforced, and their defaults punished, in the manner by this Act directed with respect to jurors in boroughs.

(7.) Nothing in this section shall affect the Cinque Ports Act, 1869, or the Acts therein recited.

For provisions of this Act with respect to jurors in boroughs, see sec. 186, p. 160.

CAMBRIDGE.

Vice-Chancellor of Cambridge.

249.—(1.) It shall be lawful for the Queen, from time to time, by her commission of the peace for the borough of Cambridge, to constitute the Vice-Chancellor for the time being of the University of Cambridge a justice for that borough.

(2.) He shall not, by reason of being so constituted, have any greater authority as to the grant of licences to alehouses than any other justice named in the commission.

(3.) But nothing in this section shall affect the rights and privileges which the Vice-Chancellor lawfully has or enjoys, or might have lawfully had or enjoyed if he were not so constituted a justice.

SAVINGS.

Saving for existing Corporations.

250.—(1.) Nothing in this Act shall prejudicially affect any charter granted before the commencement of the Act, or take away, abridge, or prejudicially affect any of the rights, powers, privileges, estates, property, duties, liabilities, or obligations vested in or imposed on any municipal corporation existing at the commencement of this Act, or in or on the mayor, or the council of a borough then existing, or any members or committee of the council, by the incorporation of the inhabitants of the borough, or by transfer from any other authority, or otherwise; but every such charter shall continue to operate, and every such corporation shall continue to have perpetual succession and a common seal, and to be capable in law by the council to do and suffer all acts which at the commencement of this Act they and their successors respectively may lawfully do or suffer, and the corporation and all members and officers thereof and their sureties, and every such mayor, and every such council and committee, and every such officer, shall continue to have, enjoy, and be subject to the like rights, powers, offices, privileges, estates, property, duties, liabilities, and obligations, as if this Act had not been passed, without prejudice, nevertheless, to the operation of

the repeal of enactments by this Act, and to the other express provisions of this Act.

(2.) Nothing in this Act shall alter the boundaries of any borough existing at the commencement of this Act, or the number, apportionment, or qualification of the aldermen or councillors thereof, or the division thereof into wards.

(3.) Nothing in this Act shall affect the right of the council of a borough to collect by their own officers the borough rate and watch rate, or either of them, where, at the commencement of this Act, they are authorized by law to so collect, and are so collecting, the same.[1]

(4.) Nothing in this Act shall alter the respective jurisdiction of county and borough justices.

(5.) Nothing in this Act shall affect the right of any borough named in Schedule (A.) to the Municipal Corporations Act, 1835, to have a separate commission of the peace.

[1] What is referred to in this sub-section would appear to be the collection from the ratepayers of the borough rate and watch rate by officers employed by the council. It is to be observed that there is no saving where the rates are collected by officers of the council at the date of the commencement of the Act (sec. 4) if the council are not authorized by law to collect these rates by their own officers.

Saving for Local Acts.

251. Nothing in this Act shall alter the effect of any local Act of Parliament.

Saving for Prison Acts. 28 & 29 *Vict.*, *c.* 26. 40 & 41 *Vict.*, *c.* 21. 13 & 14 *Vict.*, *c.* 64.

252. Nothing in this Act, except the provision referring to the Ninth Schedule, shall affect the Prison Act, 1865, or the Prison Act, 1877, and nothing in this Act shall affect the Act of the session of the fifth and sixth years of Her Majesty, chapter ninety-eight, "to amend the laws concerning prisons," or revive or restore any enactment which, being contained in that Act, or in the Municipal Corporation (Justices) Act, 1850, or in any other Act, is virtually repealed or superseded by the Prison Act, 1865, or the Prison Act, 1877.

For provision referring to Ninth Schedule of this Act, see sec. 242.

Saving for Military and Naval Officers, &c.

253. Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishment, arsenals, barracks, or other naval or military establishments.

Saving for Dockyards, Barracks, &c.

254. Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government, of any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein or the inhabitants thereof liable to any rate for watching, paving, or lighting.

Saving as to Admiralty.

255. Nothing in this Act shall affect the authority of justices vested in the Commissioners for executing the office of Lord High Admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

Saving for Lord Warden.

256. Nothing in this Act shall affect the jurisdiction and office of the Lord Warden in his office of Admiral of the Cinque Ports.

Saving for Universities.

257. Nothing in this Act shall—

(1.) Affect the rights, privileges, duties, or liabilities of the chancellor, masters, and scholars of the Universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise; or

(2.) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those Universities respectively; or

(3.) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those Universities; or

(4.) Compel any resident member of either of those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge; or

(5.) Authorize the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act; or

(6.) Authorize the transfer of any rights or liabilities by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the University of Cambridge; or

(7.) Affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

Saving for Jurisdiction over Cathedral Precincts.

258. Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate.

Saving for Royal Prerogative.

259. Nothing in this Act shall prejudicially affect Her Majesty's royal prerogative; and the enabling provisions of this Act shall be deemed to be in addition to, and not in derogation of, the powers exerciseable by Her Majesty by virtue of her royal prerogative.

Saving as to Repealed Enactments.

260.—(1.) The repeal effected by this Act shall not affect—

(*a.*) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or

(*b.*) Any proceeding or thing pending or in course of being done at the commencement of this Act under any enactment repealed by this Act; or

(*c.*) Any jurisdiction or practice established, confirmed, or transferred, or right or privilege acquired or confirmed, or duty or liability imposed or incurred, or compensation secured, by or under any enactment repealed by this Act; or

(*d.*) Any disability or disqualification existing at the commencement of this Act under any enactment repealed by this Act; or

(*e.*) Any fine, forfeiture, punishment, or other consequence incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment repealed by this Act; or

(*f.*) The institution or the prosecution to its termination of any legal proceeding or other remedy for ascertaining, enforcing, or recovering any such jurisdiction, practice, right, privilege, duty, liability, compensation, disability, disqualification, fine, forfeiture, punishment, or consequence as aforesaid; or

(*g.*) The terms on which any money has been borrowed before the commencement of this Act under any enactment repealed by this Act.[1]

(2.) The repeal effected by this Act shall not extend to Scotland or Ireland, and shall not, as regards the enactments described in Part II. of the First Schedule, operate in respect of any place other than a borough to which this Act applies, and shall not revive or restore any statute, law, usage, custom, royal or other charter, grant, letters patent, byelaw, jurisdiction, office, right, title, claim, privilege, liability, disqualification, exemption, restriction, practice, procedure, or other matter or thing abolished by the Municipal Corporations Act, 1835, or not in force or existing at the commencement of this Act, or otherwise

affect the past operation of any enactment repealed by this Act.[2]

(3.) All elections, declarations, appointments, byelaws, rates, tables of fees, and regulations made, or pending, or in the course of being made, and all other things done, or pending, or in the course of being done, under the Municipal Corporations Act, 1835, or any other enactment repealed by this Act, before or at the commencement of this Act, shall for the purposes of this Act be of the like effect as if they had been made or done, or were pending, or in the course of being made or done under this Act, and shall, as far as may be requisite for the continuance, validity, and effect thereof, be deemed to have been made or done, or may be carried on and be made or done, as the case may require, under this Act.

[1] With regard to this section, the following observations in the memorandum which prefaced the Bill as brought in may be referred to:—As to sec. 66 of the Municipal Corporations Act, 1835, with respect to officers receiving compensation on removal from office, it is stated: "This section is limited to officers of a county or borough being in office at the passing of the Act of 1835. The Sussex case (*R.* v. *Council of Brighton*, 7 El. & B. 249) might be supposed to show that this section is not so limited, as it does not appear in the report that the clerk of the peace for Sussex, the prosecutor, there, held office at the passing of the Act of 1835; but in fact he did. For this reason the section is not reproduced, but any right to arise under it is saved by clause 258," (now sec. 260).

As to sec. 107 of the Municipal Corporations Act, 1833, which referred to the abolition of ancient criminal jurisdiction and other franchises, it is stated: "This is already repealed in part by the Statute Law Revision Act, 1874. The residue need not be reproduced, its effect being saved by clause 258." (Sec. 260). With regard to sec. 108 of the Municipal Corporations Act which related to Admiralty jurisdiction, it is said: "This is reproduced in part by clause 253." (Sec 255). "The residue need not be reproduced, its effect being saved by clause 258." (Sec. 260).

[2] For Part II. of the First Schedule, see p. 210.

The Municipal Corporations Act, 1855, by sec. 1, enacted that "so much of all laws, statutes and usages, and so much of all royal and other charters, grants and letters patent now in force relating to the several boroughs named in the Schedules A. and B. to this Act annexed, or to the inhabitants thereof, or to the several bodies or reputed bodies corporate, named in the said Schedules, or any of them as are inconsistent with or contrary to the provisions of this Act, shall be, and the same are hereby repealed and annulled."

SCHEDULES.

THE FIRST SCHEDULE.*

ENACTMENTS REPEALED.

PART I.

Enactments Repealed Generally.

5 & 6 Will. 4, c. 76.	The Municipal Corporations Act, 1835.
6 & 7 Will. 4, c. 77. in part.	An Act for carrying into effect the reports of the Commissioners appointed to consider the state of the Established Church in England and Wales, with reference to ecclesiastical duties and revenues, so far as they relate to episcopal dioceses, revenues, and patronage; in part, namely,— section twenty-six.
6 & 7 Will. 4, c. 103. in part.	The Municipal Corporation (Boundaries) Act, 1836; except section six (Berwick).
6 & 7 Will. 4, c. 104.	The Municipal Corporation (Borough Fund) Act, 1836.
6 & 7 Will. 4, c. 105.	The Municipal Corporation (Justices, &c.) Act, 1836.
7 Will. 4, & 1 Vict., c. 78.	The Municipal Corporation (General) Act, 1837.
7 Will. 4, & 1 Vict., c. 81.	The Municipal Corporation (Watch Rate) Act, 1837.

* The enactments described in this schedule are repealed from and immediately after the commencement of this Act (31st December, 1882), subject to the exceptions and qualifications in this Act mentioned. (Sec. 5, p. 2). For saving as to repealed enactments, see sec. 260, p. 205. Sec. 243 provides that "so much of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned."

1 & 2 Vict., c. 31.	The Municipal Corporation (Benefices) Act, 1838.
1 & 2 Vict., c. 35.	An Act to repeal the stamp duty now paid on admission to the freedom of corporations in England.
2 & 3 Vict., c. 27.	The Municipal Corporation (Borough Courts) Act, 1839.
2 & 3 Vict., c. 28.	The Municipal Corporation (Watch Rate) Act, 1839.
3 & 4 Vict., c. 28.	The Municipal Corporation (Watch Rate) Act, 1840.
4 & 5 Vict., c. 48.	An Act to render certain municipal corporations rateable to the relief of the poor in certain cases.
6 & 7 Vict., c. 89.	The Municipal Corporation Act, 1843.
8 & 9 Vict., c. 110.	The Municipal Corporation (Rates) Act, 1845.
11 & 12 Vict., c. 93.	An Act to confirm the incorporation of certain boroughs.
12 & 13 Vict., c. 65.	An Act to provide a more convenient mode of levying and collecting county rates, county police rates, and district police rates, in parishes situated partly within and partly without the limits of boroughs which are not liable to such rates.
12 & 13 Vict., c. 82. in part.	An Act to relieve boroughs in certain cases from contribution to certain descriptions of county expenditure; in part, namely,— section one.
13 & 14 Vict., c. 42.	The Municipal Corporation (Incorporation) Act, 1850.
13 & 14 Vict., c. 64.	The Municipal Corporation (Bridges) Act, 1850.
13 & 14 Vict., c. 91. in part.	The Municipal Corporation (Justices) Act, 1850; in part, namely,— section nine.
13 & 14 Vict., c. 101 in part.	An Act to continue two Acts passed in the twelfth and thirteenth years of the reign of Her Majesty for charging the maintenance of certain poor persons in unions in England and Wales upon the common fund; and to make certain amendments in the laws for the relief of the poor; in part, namely,— section ten.

15 & 16 Vict., c. 81. in part.	An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales; in part, namely,— section thirty-eight.
16 & 17 Vict., c. 79.	The Municipal Corporation Act, 1853.
16 & 17 Vict., c. 137.	The Charitable Trusts Act, 1853; in part, namely,— section sixty-five.
20 & 21 Vict., c. 50.	The Municipal Corporation Act, 1857.
21 & 22 Vict., c. 43.	An Act to amend the municipal franchise in certain cases.
22 Vict., c. 35.	The Municipal Corporation Act, 1859.
22 & 23 Vict., c. 32. in part.	An Act to amend the law concerning the police in counties and boroughs in England and Wales; in part, namely,— sections five and six.
24 & 25 Vict., c. 75.	The Municipal Corporations Acts Amendment Act, 1861.
31 & 32 Vict., c. 41.	The Borough Electors Act, 1868.
32 & 33 Vict., c. 23.	The Municipal Corporation (Recorders) Act, 1869.
32 & 33 Vict., c. 55.	The Municipal Corporation (Election) Act, 1869.
32 & 33 Vict., c. 62. in part.	The Debtors Act, 1869; in part, namely,— section twenty-one.
34 & 35 Vict., c. 67.	The Municipal Corporations Act, 1859, Amendment Act.
35 & 36 Vict., c. 33. in part.	The Ballot Act, 1872; in part, namely,— sections twenty and twenty-one.
35 & 36 Vict., c. 60.	The Corrupt Practices (Municipal Elections) Act, 1872.
36 & 37 Vict., c. 33.	The Municipal Corporations Evidence Act, 1873.
37 & 38 Vict., c. 59.	The Working Men's Dwellings Act, 1874.
38 & 39 Vict., c. 40.	The Municipal Elections Act, 1875.
39 & 40 Vict., c. 61. in part.	The Divided Parishes and Poor Law Amendment Act, 1876; in part, namely,— section thirty.
40 & 41 Vict., c. 69.	The Municipal Corporations (New Charters) Act, 1877.

41 & 42 Vict., c. 26. in part.	The Parliamentary and Municipal Registration Act, 1878; in part, namely,— sections twenty, thirty-four, and forty-one.

PART II.

Enactments repealed only as to Boroughs within this Act.

3 Edw. 1, c. 6. in part.	The Statutes of Westminster, the first. Amerciaments shall be reasonable; in part, namely,— as far as it relates to a city, borough, or town.
3 Edw. 1, c. 31. in part.	The Statutes of Westminster, the first. Excessive toll in market town. Murage; in part, namely,— from "Touching citizens" to "the King," inclusive.
15 Rich. 2, c. 5. in part.	St. 7 Edw. I. de Religiosis. Converting land to a churchyard declared to be within that statute. Mortmain, where any is seised of lands to the use of spiritual persons. Mortmain to purchase lands to gilds, fraternities, offices, commonalties; or to their use; in part, namely,— as far as it relates to mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty.
2 & 3 Phil. & Mary, c. 18.	An Act touching commissions of the peace and gaol delivery in towns corporate not being counties in themselves.
7 Jas. 1, c. 5. in part.	An Acte for ease in pleading against troublesome and contencious suites presented against justices of the peace, maiors, constables, and certaine other His Majesties officers for the lawful execution of their office; in part, namely,— as far as it relates to mayors of cities or towns corporate.
21 Jas. 1, c. 12. in part.	An Acte for ease in pleading against troublesome and contencious suites; in part, namely,— section three, as far as it relates to mayors of cities or towns corporate.

11 Geo. 1, c. 4.	An Act for preventing the inconvenience arising from want of elections of mayors or other chief magistrates of boroughs or corporations being made upon days appointed by charter or usage for that purpose, and directing in what manner such elections shall be afterwards made.
12 Geo. 3, c. 21.	An Act for giving relief in proceedings upon writs of mandamus for the admission of freemen into corporations and for other purposes therein mentioned.
32 Geo. 3, c. 58.	An Act for the amendment of the law in proceedings upon information in nature of *quo warranto*.
55 Geo. 3, c. 51.	An Act to amend an Act of His late Majesty King George the Second, for the more easy assessing, collecting, and levying of county rates.
57 Geo. 3, c. 91.	An Act to enable justices of the peace to settle the fees to be taken by clerks of the peace of the respective counties and other divisions of England and Wales.
2 & 3 Will. 4, c. 69.	An Act to prevent the application of corporate property to the purposes of election of members to serve in Parliament.
3 & 4 Will. 4, c. 31.	An Act to enable the election of officers of corporations and other public companies now required to be held on the Lord's Day to be held on the Saturday next preceding or on the Monday next ensuing.
4 & 5 Will. 4, c. 27.	An Act for the better administration of justice in certain boroughs and franchises.
7 Will. 4, & 1 Vict., c. 19.	An Act to empower the recorder or other person presiding at quarter sessions in corporate cities and towns, and justices of the peace for counties, ridings, or divisions, to divide their respective courts in certain cases.
5 & 6 Vict., c. 104.	The Municipal Corporation Act, 1842.
15 & 16 Vict., c. 5.	The Municipal Corporation Act, 1852.
23 & 24 Vict., c. 16.	The Municipal Corporation (Mortgages, &c.) Act, 1860.
23 & 24 Vict., c. 51. in part.	The Local Taxation Returns Act, 1860; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.

23 & 24 Vict., c. 106. in part.	The Lands Clauses Consolidation Acts Amendment Act, 1860; in part, namely,— section six.
38 & 39 Vict., c. 89. in part.	The Public Works Loans Act, 1875; in part, namely,— in section forty, the second paragraph (beginning "The council" and ending "this Act"), and the words "and the council respectively" in the last paragraph.
39 & 40 Vict., c. 20. in part.	The Statute Law Revision Act (Substituted Enactments) Act, 1876; in part, namely,— section three.
40 & 41 Vict., c. 17.	An Act to amend the law relating to the division of courts of quarter sessions in boroughs.
40 & 41 Vict., c. 66. in part.	The Local Taxation Returns Act, 1877; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
42 & 43 Vict., c. 30. in part.	The Sale of Food and Drugs Act, Amendment Act, 1879; in part, namely,— section eight.
43 Vict., c. 17.	The Town Councils and Local Boards Act, 1880.

THE SECOND SCHEDULE.*

MEETINGS AND PROCEEDINGS OF COUNCIL.

1. The council shall hold four quarterly meetings in every year for the transaction of general business.

2. The quarterly meetings shall be held at noon on each ninth of November, and at such hour on such other three days before the first of November then next following as the council at the quarterly meeting in November decide or afterwards from time to time by standing order determine.

As to the 9th of November happening to be a Sunday, or a day appointed for public fast, humiliation, or thanksgiving, see sec. 230.

Under the Municipal Corporations Act, 1835, sec. 69, it was necessary that the council should, at their quarterly meeting, held on the 9th of November, decide as to the days before the 1st of November on which the three quarterly meetings should be held. The words "or afterwards from time to time by standing order determine" are new.

3. The mayor may at any time call a meeting of the council.

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to him, any five members of the council may forthwith, on that refusal, call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

It will be observed that words have been introduced to meet the case of a mayor failing to call a meeting after requisition, without refusing to do so.

By the Municipal Corporations Act, 1835, it was provided that no notice need be given of the business to be transacted at the quarterly meetings. This provision is not reproduced. See Rules 6 and 8 in this Schedule as to the summons for a meeting specifying the business to be transacted at such meeting, and as to no business, with the exception mentioned in Rule 8, being transacted at a meeting other than that specified in the summons.

5. Three clear days at least before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall. Where the

* As to the provisions in this Schedule, see sec. 22, p. 28.

meeting is called by members of the council, the notice shall specify the business proposed to be transacted thereat.

It would appear that if the mayor calls the meeting, it is not requisite that the notice "fixed on the town hall" should specify the business to be transacted at the meeting. But if the meeting is called by members of the council, the business to be transacted must be specified in the notice. As to specifying the business in the summons to attend the meeting, see Rules 6 and 8.

As to fixing notices on the town hall, see sec. 232.

6. Three clear days at least before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council, three clear days at least before the meeting.

No exception with regard to the summons specifying the business to be transacted at a meeting is made with regard to quarterly meetings.

The Municipal Corporations Act, 1835, required that the summons should "be left at the usual place of abode of every member of the council, or at the premises in respect of which he is enrolled a burgess." It will be observed that it is now required that the summons "shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council."

7. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

8. No business shall be transacted at a meeting other than that specified in the summons relating thereto; except in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

As to the election of mayor, aldermen, and sheriff, at the quarterly meeting on the 9th November, see secs. 61, 60, and 170. See also sec. 53 as to assigning an alderman to act as returning officer at an election for a ward.

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the deputy mayor, being present, is not chosen, then such aldermen, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman.

Section 16 (p. 23), provides that the deputy-mayor is not to take the chair at a meeting of the council, unless specially appointed at the meeting to do so.

10. All acts of the council, and all questions coming or arising before the council, may be done and decided by the majority of such members of the council as are present and vote at a meeting held in pursuance of this Act, the whole number present at the

meeting, whether voting or not, not being less than one-third of the number of the whole council.

It will be observed that the words "and vote," and "whether voting or not," have been introduced in this clause.

With regard to byelaws, it is provided by sec. 23, that a byelaw under that section shall not be made unless at least two-thirds of the whole number of the council are present.

See also sec. 22, p. 28, which provides that a member of the council shall not vote or take part in the discussion of any matter in which he has directly or indirectly, by himself or by his partner, any pecuniary interest.

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorized by this Act.

As to the minutes of the proceedings of the council, see sec. 22; and also secs. 233 and 235 as to inspection of minutes and forging the signature subscribed to minutes of the council, &c.

13. Subject to the foregoing provisions of this Schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

THE THIRD SCHEDULE.

ELECTIONS—PART I.

*Preparation and Revision of Parish Burgess Lists in Boroughs not Parliamentary.**

1. On or before each first of September, the overseers of each parish shall make, sign and deliver to the town clerk a list, called the parish burgess list, of all persons entitled to be enrolled in the burgess roll for the year in respect of property in that parish.

For definition of the term "overseers," see sec. 7, pp. 3 and 4. Every matter by this Act required to be done by the overseers may be lawfully done by the majority of them (sec. 238).

With respect to the persons entitled to be enrolled as burgesses, see pp. 5-15, 38-40.

As to the arrangement of the parish burgess lists, see sec. 46, p. 49.

With regard to the penalty when an overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act, see sec. 75, and the cases of *R.* v. *Burrell*, *Hunt* v. *Hibbs*, *R.* v. *Share*, and *Gregory* v. *Fell*, cited in the notes to that section (pp. 65-66).

It is not necessary that the list should be delivered to the town clerk personally. If it is delivered to a servant at the house of the town clerk it is sufficient. *R.* v. *Mayor of Rochester*, 7 E & B. 928; E. B. & E. 1024; 27 L. J., Q. B. 45; 4 Jur., N.S. 1227; 6 W. R., 838.

The overseers of each parish at the time that they make the parish burgess list are also to make a list of the persons entitled in respect of the occupation of property in the parish to be elected councillors as being resident within fifteen miles, although beyond seven miles from the borough (sec. 49, p. 52).

As to the case of the 1st of September falling on a Sunday, or a day appointed for public fast, humiliation or thanksgiving, see sec. 230, p. 191.

For penalty on the town clerk refusing to receive the list, see sec. 75, p. 65.

2. The overseers shall keep a printed copy of the parish burgess list made by them open to public inspection on the first fifteen days of September.

The list is to be open to inspection "at any reasonable time during the hours of business, and without payment." If a person having the custody of the list obstructs any person authorized to inspect the list in making such inspection, he is liable on conviction to a fine of £5.

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* This Schedule applies only when no part of the area of a borough is co-extensive with or included in the area of a Parliamentary borough. Where the whole or part of the area of a borough is co-extensive with or included in the area of a Parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878. (Sec. 44, p. 47).

3. The town clerk shall cause a printed copy of all the parish burgess lists to be fixed on the town hall, and to be kept so fixed during the last seven of those fifteen days.

As to fixing on the town hall, see sec. 232.

For penalty for neglecting or refusing to print and publish the parish burgess lists, see sec. 75, p. 65.

Where the mayor and assessors refused to revise the list on the ground that the lists had not continued fixed on the town hall during the whole of the prescribed number of days, it was considered that the mayor and assessors were guilty of a default in not revising the list. *R.* v. *Mayor, &c of Rochester*, 7 E. & B. 910, 923; 6 B. & E. 1024; 27 L. J., Q. B. 45; 4 Jur., N.S. 1227; 6 W. R., 838.

4. Every person whose name is not in a parish burgess list, and who claims to have it inserted therein (in this Act referred to as a claimant), shall, on or before the fifteenth of September, give notice in writing of his claim to the town clerk.

For form of notice of claim, see Form D. in Part II. of Eighth Schedule (p. 234). Section 240 provides that forms in the Eighth Schedule or forms to the like effect, varied as circumstances may require, may be used, and shall be sufficient in law.

A notice of claim which does not state the parish in which the property is situate, and in respect of which the poor rate has been paid or compounded for is bad. See *R.* v. *Mayor, &c. of Kidderminster*; 2 L. M. & P. 201; 20 L. J., Q. B. 28, where the claim was as follows:—"I occupy a house in S. Street, in the said borough, and my landlord, W. P., has been rated in respect of the said house, from the 31st December, 1847, up to the present time," &c.

With regard to signing a notice of claim with the initials of the Christian name instead of the name in full, see *R.* v. *Mayor, &c. of Hartlepool*, 2 L. M. & P. 666; 21 L. J., Q. B. 71; 15 Jur., 1158. In that case the claimant who had been omitted by mistake from the burgess list, signed the claim with the initials of his Christian names, and with his surname in full. He did not attend before the mayor and assessors to support his claim; but the overseers, who had omitted the name by an oversight, stated that the claim was good, and showed to the court of revision the poor-rate book, containing the names of the claimant. There was no other person of the same name in the borough, and the court of revision was well acquainted with the person and handwriting of the claimant. The court, however, rejected the claim, on the ground that the signature by initials of the Christian names was insufficient. It was held that the mayor and assessors had sufficient information as to the meaning of the initials to have warranted them in inserting the name on the burgess list, and granted a *mandamus* to the mayor, commanding him to insert the name on the burgess roll.

See also *R.* v. *Bradley*, *R.* v. *Avery*, and *R.* v. *Plenty*, referred to in the notes to sec. 60, p. 58.

5. Every person whose name is in a parish burgess list may object to any other person as not being entitled to have his name retained in that or any other parish burgess list.

For form of notice of objection, see Form E. in Part II. of Eighth Schedule (p. 234). See also sec. 240 as to forms in Schedule.

6. Every person so objecting (in this Act referred to as an objector) shall, on or before the fifteenth of September, give to the town clerk, and also give to the person objected to, or leave at or on the property for which he appears in the parish burgess list to be rated, notice in writing of the objection.

A notice of objection is not bad by reason of its not stating that the objector was rated, nor by reason of the parish, in which the property for which the objector is rated is situate, being omitted. The notice of objection was signed "H. E., of Glendower Street, in the borough of Monmouth, on the burgess list of the said borough for a house described to be situate in Almshouse Street in the said borough." Neither is such a notice bad by reason of the nature of the property, in respect of which the person objected to is rated, not being specified. *R.* v. *Mayor, &c. of Monmouth*, *R.* v. *Mayor, &c. of Bolton*, 5 L. R., Q. B. 251; 39 L. J., Q. B. 77; 21 L. T., n.s., 748.

Where the notice of objection was in the following terms: "To Mr. J. B.—I hereby give you notice that I object to your name being retained, &c.," it was held by the court (Lord Campbell, C.J., Coleridge, J., and Wightman, J.), in *R.* v. *Mayor, &c. of Harwich*, 1 E. & B. 617; 17 Jur., 914, to be insufficient. The notice to the town clerk was in the precise form given in the statute. In *R.* v. *Mayor, &c. of Harwich*, 1 L. & M. 95; 22 L. J., Q. B. 81.; Compton, J., in the Bail Court, had given a decision to the contrary.

A notice of objection, signed A. B., King's Quay Street, Harwich, would appear to be insufficient, as the form in the statute required that, in the case of the objector, "the place of abode, and the property for what he is said to be rated in the parish burgess list," should be stated. *R.* v. *Mayor, &c. of Harwich*, 1 P. & D. 134; 8 A. & E. 919; 8 L. J., Q. B. 13; 2 Jur., 1086.

7. The town clerk shall make two separate lists of the claimants and the persons objected to (in this Act referred to as respondents), and shall cause printed copies thereof to be fixed on the town hall, and to be kept so fixed during the last seven days of September.

For forms of lists of claimants and of persons objected to, see Forms F. and G. in Part II. of the Eighth Schedule, p. 234, 235. See also sec. 240 as to forms in the Schedules.

As to fixing on town hall, see sec. 232; and as to the lists continuing so fixed, see *R.* v. *Mayor, &c. of Rochester*, referred to in note to Rule 3 in this Schedule.

For penalty for neglecting or refusing to publish the lists of claimants and respondents, see sec. 75, p. 65.

8. He shall also keep a printed copy of each of these lists, open to public inspection on any day during the same seven days.

The lists are to be open to inspection at any reasonable time during the hours of business and without payment. If a person having the custody of the lists obstructs any person authorized to inspect the lists in making such inspection, he is liable, on conviction, to a fine of £5.

9. The mayor and the two revising assessors shall in each year revise the parish burgess lists.

As to the revising assessors in non-parliamentary elections, see sec. 29 (p. 35).

Section 71 (1) provides that, if the parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

For penalty on a mayor or revising assessor neglecting or refusing to revise a parish burgess list, see sec. 75 (p. 65).

Where the mayor and assessors of a borough at the revision court erroneously determined that certain notices of objection were invalid, and refused to inquire into the qualifications of the persons objected to, it was held that they had declined jurisdiction, and a *manaamus* was granted commanding them to hold a court to revise the list, although the time limited for holding the court had elapsed. Cockburn, C. J.: It is said that inasmuch as the holding another court for the purpose of revising the list would be attended with inconvenience, we ought not to grant a *mandamus*. If this case only affected a few votes, which, at any future election, would not in all probability turn the scale, it would not, I think, be a wise exercise of our discretion to issue the writ, but as the number of names objected to is a very large proportion of the total number of names on the burgess list, it is a more important matter, and we ought not, therefore, to refuse the application. Blackburn, J.: If there had only been one or two names objected to, we ought not, in our discretion, to issue the writ, but when we find so large a number of persons objected to and nevertheless retained on the list without inquiry, it is impossible not to see that it might make a very serious difference in the state of the municipal constituency. *R.* v. *Mayor of Monmouth: R.* v. *Mayor of Bolton*, L. R., 5 Q. B. 251; 39 L. J., Q. B., 77; 21 L. T., n. s., 748.

A *mandamus* may be granted commanding the mayor to hold a court for the revision of the lists when his predecessor and the assessors have omitted to hold a court, as directed. *R.* v. *Mayor of Rochester*, 7 E. & B. 910; E. B. & E. 1024; 27 L. J., Q. B. 45; 4 Jur., N.S. 1227; 6 W. R., 838. See also *R.* v. *Mayor, &c. of Dartmouth*, 7 E. & B. 917, note.

In *R.* v. *Seale*, 8 E. & B. 22; 3 Jur., N.S. 1244, it appeared that the mayor and assessors at the revision of the burgess list for a borough erroneously treated the burgess list *de facto* made out for one of the parishes as a nullity. They then made out a fresh burgess list for that parish, and inserted on it the name of a person in the original parish burgess list who had given notice of claim and proved his title to their satisfaction, and the name thus inserted was transferred to the burgess roll. It was held in the Exchequer Chamber that such person, though qualified in all respects to be on the burgess list, acquired by the act of the mayor and assessors no title to be a burgess. "It is with the lists sent in by the overseers, and with them alone, that the mayor is to deal."

It was also held in *R.* v. *Mayor, &c. of Harwich*, 21 L. J., Q. B. 193; 16 Jur., N.S. 291; that where the mayor and assessors have refused to revise a burgess list as being defective and null, they could not revise the list of claimants to be inserted in that burgess list.

In *R.* v. *Mayor of Lichfield*, 1 Q. B. 453; 1 G. & D. 28; 10 L. J., Q. B. 171; 5 Jur., 889; it appeared that the overseers of a parish negligently omitted to send in a burgess list for revision. M. having sent in a notice of claim to be placed on the list, the mayor held that the name of M. could not be placed on any list, though he proved his qualification, and the burgess roll was made up omitting his name. The court granted a *mandamus* to the mayor to insert M's. name on the burgess roll, under the clause in the Municipal Corporations Act, 1835, on which sec. 47 of this Act is based, his claim having been rejected within the meaning of that clause.

10. They shall for this purpose hold an open court in the borough on some or one of the first fifteen days of October.

It will be observed from Rule 25 in this Schedule, that, although the court may be adjourned from time to time, no adjourned court is to be held after the 15th of October.

11. They shall give three clear days notice of the holding of the court, by notice fixed on the town hall.

12. The town clerk shall at the opening of the court produce the parish burgess lists, and a copy of the lists of claimants and respondents.

13. The court shall insert in the parish burgess lists the name of every person who has duly claimed to have his name inserted therein, and is proved to the satisfaction of the court to be so entitled.

As to application for a *mandamus* to mayor to insert in burgess roll the name of a person whose claim has been rejected at the revision, see sec. 47, p. 50.

14. The court shall expunge from the parish burgess lists the name of every person proved to the court to be dead.

15. Subject as aforesaid, the court shall retain in the parish burgess lists the name of every person to whom objection has not been duly made.

16. The court shall also retain therein the name of every respondent, unless the objector appears by himself, or by some person on his behalf, in support of the objection.

17. Where the objector so appears, the court shall require proof of the respondent's qualification, and, if it is not proved to the satisfaction of the court, shall expunge his name from the parish burgess list.

As to application for a *mandamus* to mayor to insert in burgess roll the name of a person whose name has been expunged at the revision of the lists, see sec. 47, p. 50.

18. If the name of any person is entered in respect of property situate in more than one ward, the court may call upon him to choose, and if he does not choose, may determine in which of those wards he shall be entitled to vote.

This provision is in accordance with the decision in *R.* v. *Mayor, &c. of Cambridge*, 28 L. J., Q. B. 10; 5 Jur., N.S. 436, where it was held, on the revision of the burgess lists of a borough, divided into wards, that the mayor may call upon a burgess who occupies distinct premises, conferring a vote in more than one ward, and whose name appears under each in the burgess lists, to select the ward in which he will be enrolled in the burgess roll for voting, and, in default of his selecting, may retain his name on the list of any of the wards in which he so occupies, and expunge his name from the others. See also *R.* v. *Tugwell* and *R.* v. *Harrald*, cited in note to sec. 51, p. 53.

19. The court shall correct any mistake and supply any omission proved to the court to have been made in any of the lists with

respect to the name or abode of any person, or the description of any property.

Section 18 of the Municipal Corporations Act, 1835, empowered the court to "correct any mistake, or supply any omission which shall be proved to the court to have been made in any of the lists in respect of the name or place of abode of any person who shall be included in any such list, or in respect of the local description of his property." With reference to this provision, it was held in *R.* v. *Mayor of Chipping Wycombe*, 44 L. J., Q. B. 82; 32 L. T., N.S. 204; 23 W. R., 347; that the revision court were not empowered to amend the list when the name of a burgess was inserted in the list, in respect of a "house," and it was proved before the revision court that his qualification was in respect of a counting-house and not a house, and that the name was rightly expunged.

The terms of this Rule, it will be observed, differ from the provision in sec. 18 of the Municipal Corporations Act, 1835, as it enables the court to correct any mistake or omission with respect to "the description of any property."

20. The overseers, vestry clerks, and collectors of poor rates of every parish shall attend the court.

21. The court may require any overseer or person having the custody of any book containing any poor rate made in any year in any parish to produce the same at the court for inspection.

22. The court may examine on oath the town clerk, overseers, vestry clerks, and collectors, and any claimant, objector, respondent, or witness.

With respect to the authority to administer the oath, see sec. 239.

23. The court shall, on the hearing in open court, determine on the validity of all claims and objections.

24. The mayor shall, in open court, write his initials against each name inserted or expunged, and against any part of the lists in which a mistake has been corrected or omission supplied, and shall sign his name to every page of the lists so revised.

25. The mayor may adjourn the court from time to time, so that no adjourned court be held after the fifteenth of October.

With reference to this Rule, see sec. 71 (1).

PART II.

*Rules as to Nomination in Elections of Councillors.**

1. Every candidate for the office of councillor must be nominated in writing.

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* The Rules in this Part are applicable to the nomination of elective assessors and revising assessors as well as councillors. See sec. 62 and 72.

As to the persons qualified to be elected as councillors, see secs. 11 and 12 (pp. 15, 17) and Rules 4 and 18 in this Schedule.

By sec. 51, p. 53, it is provided that, subject as therein-mentioned, at an election of councillors, a person shall be entitled to receive a nomination paper if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, but not otherwise.

As to what is to be deemed the burgess roll or ward roll for the purposes of the provisions relating to proceedings preliminary to election, see Rule 18 in this Schedule.

For form of nomination paper, see Form I, in Part II. of Eighth Schedule, p. 236.

The form of nomination paper now prescribed, is similar to that which was provided for by the Municipal Elections Act, 1875, except that in the latter it was necessary to state as regards each burgess subscribing, the situation of the property in respect of which he was enrolled, as well as his number on the burgess roll. It is not now requisite that the situation of the property should be stated, but "the number on burgess roll, with the ward or polling district, if any, having a distinct numbering," must be shown.

With regard to the previous form of nomination paper, it may be observed, that it was held in *Soper* v. *Mayor of Basingstoke*, L. R., 2 C. P. D. 440; 46 L. J., C. P. 422; 36 L. T., N.S. 468; 25 W. R., 693; that it was not necessary that the description of the place of abode of a subscribing burgess should be identical with the burgess roll, and that it was sufficient if it was the same property described with sufficient particularity, so as not to mislead.

2. The writing must be subscribed by two burgesses of the borough or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination.

It is to be observed that sec. 51, p. 53, provides that no person shall subscribe a nomination paper in more than one ward.

This is in accordance with the decision in *R.* v. *Parkinson*, L. R., 3 Q. B. 11; 37 L. J., Q. B. 52; 17 L. T., N.S. 169; 16 W. R., 78, in which it was held that the person nominating a candidate for town councillor must be entitled to vote for the particular ward for which he nominates, and that if he be entitled to vote only for another ward, his nomination and the election of the candidate are void.

See also *Harman* v. *Park* referred to in note to Rule 14.

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more.

With regard to this Rule, which provides that "the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled," it is necessary to draw special attention to Rule 10, which enacts that "where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered." The two Rules appear to be inconsistent. Rule 3 was in the original Bill, but Rule 10 was added in the course of the Bill passing through Parliament.

4. Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by this Act to be made.

With reference to this provision, see Rule 18 as to what is to be deemed the burgess roll or ward roll for the purpose of the proceedings preliminary to election. As to the non-resident list, see sec. 49, p. 52.

5. The nomination paper must state the surname and other names of the candidate, with his abode and description.

In a nomination paper at an election for town councillors of a borough, the surname and Christian names were inserted as follows: "Mather, Robert V.," the name of the person being Robert Vicars Mather. Objection was made to the nomination on the ground that the surname and other names were not stated in the nomination paper, and the mayor allowed the objection. It was held that the objection was a good one and was properly allowed. *Mather* (*app.*) v. *Brown and others* (*resps.*), L. R. 1 C. P. D. 596; 45 L. J., C. P. 547; 34 L. T., N.S. 869; 24 W. R., 736. In that case, Coleridge, C. J., said: "'Robert V.' is, according to the authorities, a misnomer. Is it cured by section 142 of the Municipal Corporations Act, 1835" (the section as to misnomers, which is reproduced in sec. 241 of this Act)? "That Act does not extend to a document which was not then in existence, and consequently not in the contemplation of the Act." Section 142 is reproduced in this Act without any express reference to nomination papers, but the nominations are made in pursuance of the provisions of this Act. See also sec. 72.

6. The town clerk shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required, and shall, at the request of any burgess, fill up a nomination paper.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder, at the town clerk's office, seven days at least before the day of election, and before five o'clock in the afternoon of the last day for delivery of nomination papers.

As to computation of time, see sec. 230.

When it appeared that the nomination paper of a candidate in a municipal election was delivered to the town clerk by an agent of the candidate, and was not otherwise delivered by the candidate himself, or his proposer or seconder, it was held that the delivery of the nomination paper by the agent invalidated the nomination. *Monks* v. *Jackson*, L. R., 1 C. P. D. 683; 46 L. J., C. P. D. 162; 35 L. T., N.S. 95.

8. The town clerk shall forthwith send notice of every such nomination to each candidate.

9. The mayor shall attend at the town hall on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made in writing to a nomination paper.

See Rule 14, and notes thereon.

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered.

With reference to this Rule, see note on Rule 3.

11. Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this Schedule referred to as the candidate's representative) to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day for delivery of nomination papers.

12. Each candidate and his representative, but no other person, except for the purpose of assisting the mayor, shall be entitled to attend the proceedings before the mayor.

13. Each candidate and his representative may, during the time appointed for the attendance of the mayor for the purposes of this Schedule, object to the nomination paper of any other candidate for the borough or ward.

14. The decision of the mayor shall be given in writing, and shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to reversal on petition questioning the election or return.

With reference to the decision of the mayor, see *Budge* v. *Andrews and others*, *Monks* v. *Jackson*, and *Burgoyne* v. *Collins*, cited in notes to sec. 87, p. 74.

In *Howes and another* v. *Turner and another*, L. R., 1 C. P. D. 670; 45 L. J., C. P. D. 550; 35 L. T., N.S. 58, it appeared that the town clerk gave notice of an election in due time, but the notice directed candidates to deliver their nomination papers on a day which was too late. W., one of the candidates, delivered his nomination paper in proper time, but supposing that the fact of the Christian name of one of the burgesses being written with a contraction would be an objection, without notice, and without the knowledge of the town clerk, got the paper back from a clerk in the town clerk's office, and returned it re-signed by the burgess after the proper day for delivery. T., another candidate, delivered his nomination paper on the day named in the notice. Objections to the nominations on these grounds was taken before the mayor, but he disallowed them. The election was held, and W. and T. were elected. On a petition, it was held that T.'s paper was not delivered in time, and that, as W.'s paper was good at the time of delivery, and was not taken back with the intention of withdrawal, it was delivered in time; but as the notice of the town clerk was so defective as to mislead one of the candidates, and probably the electors, the election was void, and there must be a new election.

In *Harman* v. *Park*, L. R., 7 Q. B. D. 369; 50 L. J., Q. B. 775; 45 L.T., N.S. 174; it appeared that at an election of a ward councillor, a burgess was nominated in a paper signed by B. and H., as proposer and seconder, and by eight other burgesses as assenting to the nomination. After the nomination paper had been delivered to the town clerk, it having been discovered that B. was not on the burgess roll, it was altered in the absence of the seconder and assenting burgesses, and without their knowledge, by striking out the name of B. as proposer, and substituting that of G., a duly enrolled burgess. It was held that the nomination under these circumstances was invalid.

Where the number on the burgess roll of a burgess nominating a candidate at a municipal election for the office of town councillor, was entered in the nomination paper as 695 (the number shown in an uncorrected proof of the burgess roll, which had been supplied by a clerk in the town clerk's office), instead of the right number, 104, and an objection to the nomination on this ground was allowed by the returning officer, although no one had been, or could be misled by the mistake; it was held that the returning officer was right

in allowing the objection, and that sec. 13 of the Ballot Act, 1872, did not meet the case. *Gothard* v. *Clarke*, L. R., 5 C. P. D. 253; 49 L. J., C. P. D. 474; 42 L. T., N.S. 776; 29 W. R., 102.

15. The town clerk shall at least four days before the day of election cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed on the town hall, and in the case of a ward election, in some conspicuous place in the ward.

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination.

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him, and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers: Provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll although that roll is not yet completed.

PART III.*

Modifications of the Ballot Act in its Application to Municipal Elections.

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and Rules 16 and 19 in the Schedule to that Act, shall not apply in the case of a municipal election.

* The provisions of the Ballot Act, 1872, so far as they apply to municipal elections, are set forth in the appendix, see p. 247, and the several modifications of the Act in its application to municipal elections are referred to in the notes on those provisions.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor may be necessary for effectually taking the poll at the election.

5. All expenses of the election shall be defrayed in manner by this Act provided.

6. No return shall be made to the clerk of the Crown in Chancery.

PART IV.

*Enactments which are to revive on the Expiration of the Ballot Act.**

With respect to a contested election of councillors, elective auditors, or revising assessors, the following rules shall be observed:

1. The returning officer shall cause the requisite polling booths to be erected, or the requisite rooms to be hired and used as polling booths.

2. The returning officer shall, at least two days before the day of election, give public notice of the situation, division, and allotment of the different booths.

3. Each booth shall be divided into compartments, and the returning officer shall appoint a clerk to take the poll at each compartment.

4. There shall be affixed on each booth a notice specifying the part of the borough for which it is allotted.

5. No person shall be admitted to vote at any booth except that allotted for the part in which his qualifying property is situate, unless no booth is allotted for that part, in which case he may vote at any booth.

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* The Ballot Act, 1872, is continued until the 31st of December, 1883, by the Expiring Laws Continuance Act, 1882, 45 & 46 Vict., c. 64. The Rules in this Part, therefore, can have no effect prior to the date mentioned.

6. If there is more than one booth, the returning officer may appoint a deputy to preside at each booth.

7. A burgess may vote by delivering to the returning officer or his deputy a voting paper containing the surnames and other names of the persons for whom he votes, with their abodes and descriptions. The voting paper must be signed by the burgess, and must state the qualifying property in respect of which he votes.

8. The returning officer or his deputy shall, if so required by two burgesses, put to any person offering to vote at the time of his delivering in his voting paper, but not afterwards, the following question:

"Are you the person whose name is signed as [*A.B.*] to the voting paper now delivered in by you?"

The vote of a person required to answer this question shall not be received until he has answered it. If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

9. The returning officer shall, at the close of the poll, examine the voting papers, and shall publish a list of the persons elected not later than two o'clock in the afternoon of the day next but one after the day of election.

10. The town clerk shall, for a period of six months from the day of election, keep at his office the voting papers used at the election, and shall permit any burgess to inspect the same on payment of one shilling for each search.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor may be necessary for effectually taking the poll at the election.

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8. The returning officer or his deputy shall, if so required by two burgesses, put to any person offering to vote at the time of delivering in his voting paper, but not afterwards, the following question:

"Are you the person whose name is signed as 'A B' to the voting paper now delivered in by you?"

The vote of a person required to answer this question shall not be received until he has answered it. If any person who has makes a false answer thereto he shall be guilty of a misdemeanour.

9. The returning officer shall, at the close of the poll, open the voting papers, and shall publish a list of the persons elected not later than two o'clock in the afternoon of the day next but one after the day of election.

10. The town clerk shall, for a period of six months from the day of election, keep at his office the voting papers used at the election, and shall permit any burgess to inspect the same on payment of one shilling for each search.

THE FOURTH SCHEDULE.

FEES AND REMUNERATION

The following fees and remuneration shall be payable:—

1. *Commissioner for Division into Wards or Alteration of Wards.*

Five guineas for every day he is employed, over and above his travelling and other expenses.

2. *Assistant Recorder and Officers of Second Court of Quarter Sessions.*

For every day not exceeding two, or, by resolution of the council, with the sanction of the Secretary of State, not exceeding six—

To an assistant recorder	Ten guineas.
To an assistant clerk of the peace ...	Two guineas.
To an additional crier	Half a guinea.

The remuneration is payable on a certificate from the recorder showing the amount due.

3. *Coroner.*

To the borough coroner (subject to the provisions of any other Act relating to coroners)—

For every inquisition which he duly takes in the borough	Twenty shillings.
and	
For every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition.	Ninepence.

4. *Special Constables.*

To a special constable, for every day during which he is called out to act as such ...	Three shillings and sixpence.

THE FIFTH SCHEDULE.

PAYMENTS OUT OF THE BOROUGH FUND.*

PART I.

Payments which may be made without Order.

1. The remuneration (if any) of the mayor, of the recorder (if any) in his capacity either of recorder or of judge of a borough

* As to application of Borough Fund, see also secs. 140, 141, 143, and 226 (3).

civil court, of the stipendiary magistrate (if any), of the town clerk, of the treasurer, of the clerk of the peace when paid by salary, of every other officer appointed by the council, and of the clerk to the justices.

As to the remuneration of the mayor, see sec. 15 (4); of the recorder, secs. 163 (7) and 175 (5); of the stipendiary magistrate, sec. 161 (4); and of the town clerk, treasurer, and other officers, sec. 20.

2. The remuneration and allowances certified by the Treasury to be payable to the Treasury in respect of an election petition.

See sec. 101 as to expenses of election court.

3. The remuneration certified by the recorder to be due to any assistant recorder, assistant clerk of the peace, or additional crier.

See sec. 168 (8) and the Fourth Schedule, pp. 152, 228.

PART II.

Payments which may not be made without Order.

1. The expenses incurred by overseers, and by the town clerk and other municipal authorities, in relation to the enrolment of burgesses and the holding of municipal elections, or so much of those expenses as is not otherwise provided for under section thirty of the Parliamentary and Municipal Registration Act, 1878.

For provisions of sec. 30 of the Parliamentary and Municipal Registration Act, 1878, see p. 51.

2. The expenses incurred by the town clerk in providing accommodation for an election court held under this Act.

3. The expenses of providing, furnishing, maintaining, or improving the corporate buildings, including the justices room (if any), and the necessary expenses of that room.

4. The fees payable to the clerk of the peace if not paid by salary, and under this Act to the borough coroner.

As to the clerk of the peace, see sec. 164; and as to the borough coroner, sec. 171.

5. The payments to be made under this Act to or in respect of the borough police and to any special constable, including the following payments (namely);

(*a.*) Such salaries, wages, and allowances to the borough constables, and at such periods, as the watch committee, with the approbation of the council, direct; and

(*b.*) Such further sum as may be awarded by the watch committee, subject to the approbation of the council, or by the court of quarter or petty sessions, to a borough constable as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of his duty, or as may be awarded by the watch committee, subject to the approbation of the council, to a borough constable, as an allowance to him when disabled by bodily injury or worn out by length of service; and

(*c.*) Any extraordinary expenses which a borough constable appears to have necessarily incurred in apprehending offenders, and executing the orders of any justice having jurisdiction in the borough, such expenses having been first examined and approved by that justice; and

(*d.*) All other charges and expenses which the watch committee, subject to the approbation of the council, direct to be paid for the purposes of the borough constabulary force.

6. The costs and expenses payable by the corporation in respect of the prosecution, maintenance, conveyance, transport, or punishment of offenders.

As to the cost of the conveyance of prisoners to prison, see notes to sec. 151, p. 137.

7. All sums payable under this Act by the corporation of the borough to the treasurer of a county.

With respect to the sums so payable, see sec. 153.

8. The expenses of and incidental to the division of a borough into wards or the alteration of wards, including the remuneration of the commissioner appointed for the purposes of the division or alteration.

See sec. 30, p. 36, as to division of borough into wards.

9. Such remuneration to the clerk to any commissioners for taxes in respect of making copies of assessments as the council think reasonable.

10. The expenses of and relating to a charter of incorporation for a borough, and of and relating to all elections acts and proceedings under the charter.

See Part XI., p. 175, as to grant of new charters.

11. All expenses charged on the borough fund by any Act of Parliament or otherwise by law.

12. All other expenses, not by this Act otherwise provided for, necessarily incurred in carrying this Act into effect,

THE SIXTH SCHEDULE.*

COUNTIES TO WHICH CERTAIN BOROUGHS ARE TO BE CONSIDERED ADJOINING FOR PURPOSES OF CRIMINAL TRIALS.

Berwick-upon-Tweed	Northumberland.
Bristol	Gloucestershire.
Chester	Cheshire.
Exeter	Devonshire.
Kingston-upon-Hull...	Yorkshire.
Newcastle-upon-Tyne	Northumberland.

THE SEVENTH SCHEDULE.

PROCEDURE FOR SCHEME ON GRANT OF NEW CHARTER.†

1. The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. The scheme, when settled, shall, besides being published the London Gazette, be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

5. Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme, which Bill shall be a Public Bill.

6. Before such Bill is introduced into Parliament the Committee of Council may alter the scheme in such manner as they think proper.

* With reference to this Schedule, see p. 163.

† As to grant of new charters, see Part XI., p. 175.

7. If while the Bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the Bill so far as it relates to such scheme may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Private Bill.

8. A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

THE EIGHTH SCHEDULE.

FORMS.

PART I.—DECLARATIONS ON ACCEPTING OFFICE.

FORM A.

*Form of Declaration on Acceptance of Corporate Office.**

I, *A.B.*, having been elected mayor [*or* alderman, councillor, elective auditor, *or* revising assessor] for the borough of , hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [*and in the case of the person being qualified by estate say*, And I hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be*], to the value or amount of one thousand pounds, or five hundred pounds [*as the case may require*], over and above what will satisfy my just debts].

FORM B.

Declaration by Recorder or Borough Justice.†

I, *A.B.*, hereby declare that I will faithfully and impartially execute the office of recorder [*or* justice of the peace] for the borough of according to the best of my judgment and ability.

PART II.—FORMS RELATING TO ELECTIONS.

FORM C.

THE LIST OF BURGESSES of the Borough of in the Parish [*or* Township] of .

Surname and other Names of each Person in full.	Nature of Property for which he is now rated.	Name and Situation of property for which he is now rated.
Ashton, John	Shop	No. 23, Church Street.
Bates, Thomas	House	Brook's Farm.

(Signed) *A.B.*, *C.D.*, Overseers

* As to declaration on acceptance of corporate office, see sec. 35, p. 42.

† As to declaration by recorder or borough justice, see secs. 163, p. 148, and 157, p. 142.

FORM D.

*Notice of Claim.**

To the Town Clerk of the Borough of .

I HEREBY give you notice, that I claim to have my name inserted in the parish burgess lists of the borough of that I occupy [*here describe the house, warehouse, counting-house, shop, or other building then occupied by the claimant*] in the borough, and that I have been rated in the parish of . [*here state the parish or several parishes, and the time during which the claimant has been rated in each of them within the borough, necessary for his qualification*].

Dated the day of in the year .

(Signed) John Allen of [*place of abode*].

FORM E.†

Notice of Objection.

To the Town Clerk of the Borough of [*or to the person objected to as the case may be*].

I HEREBY give you notice, that I object to the name of Thomas Bates, of Brook's Farm, in the parish of [*describe the person objected to as described in the parish burgess list*] being retained on the parish burgess lists of the borough of .

Dated the day of in the year .

(Signed) John Ashton of [*here state the place of abode and the property for which he is said to be rated in the parish burgess lists*].

FORM F.

List of Claimants.

The following Persons claim to have their Names inserted in the Parish Burgess Lists of the Borough of .

Surname and other Names of each Claimant.	Nature of Property for which he is now rated.	Situation of Property for which he is now rated.	Parish [*or* Parishes] in which he has been rated, as stated in the Claim.
Allen, John - -	House -	No. 17, High Street	Rated in the last year in Saint Mary's parish in the borough, and in the two preceding years in Saint James's parish in the borough.

(Signed) *A.B.*, Town Clerk.

* As to notices of claim, see Rule 4 in Part I. of Third Schedule, p. 217.

† As to notices of objections, see Rule 6 in Part I. of Third Schedule, p. 218.

FORM G.

List of Persons Objected to.

The following Persons have been objected to as not being entitled to have their Names retained in the Parish Burgess Lists of the Borough of .

Surname and other Names of each Person objected to.	Nature of Property for which he is now rated.	Situation of Property for which he is said to be now rated in the Overseers' List.	Parish in which is the Property for which he is now said to be rated in the Overseers' List.
Bates, Thomas -	House -	Brook's Farm -	Saint James'.

(Signed) *A.B.*, Town Clerk.

FORM H.*

Notice.

Borough of . Election of [Councillors, *or* Elective Auditors, *or* Revising Assessors, *as the case may be*] for the [Ward or several Wards of the] Borough.

Take Notice.

1. That an election of [*here insert the number of councillors, auditors, or assessors, as the case may be*] for the [ward or several wards of the] said borough will be held on the day of

2. Candidates must be nominated by writing, subscribed by two burgesses as proposer or seconder, and by eight other burgesses as assenting to the nomination.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names of the person nominated, with his abode and description, and may be in the following form, or to the like effect:

(Set out Form I.)

4. Each candidate must be nominated by a separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [*or* ward], but no more.†

* With reference to this notice, see notes on Rules in Part II. of Third Schedule, p. 221.

† See, with reference to this, Rule 10 in Part II. of Third Schedule, p. 223.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, at the town clerk's office before five o'clock in the afternoon of day the day of next.

7. The mayor will attend at the town hall on day the day of , for a sufficient time between the hours of two and four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any burgess, fill up a nomination paper.

Dated this day of 18 .

A.B., Town Clerk.

FORM I.

*Nomination Paper.**

Borough of . Election of Councillors, [elective Auditors, or revising Assessors] for Ward in the said Borough [*or* the said Borough] to be held on the day of 18 .

WE, the undersigned, being respectively burgesses, hereby nominate the following person as a candidate at the said election.

Surname.	Other Names.	Abode.	Description.

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
A. B. C. D.	

* For Rules as to nominations, see Part II. of Third Schedule, p. 221.

We, the undersigned, being respectively burgesses, hereby assent to the nomination of the above-named person as a candidate at the said election.

Dated this day of 18 .

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T.	

FORM K.

*Ballot Paper.**

Form of Front of Ballot Paper.

For Elective Auditors.

Counterfoil.

No.

Note.—The counterfoil is to have a number to correspond with that on the back of the ballot paper.

1	CADE. (John Cade, of 22, Wellclose Place, Accountant.)	
2	JOHNSON. (Charles Johnson, of 7, Albion Street, Gentleman.)	
3	THOMPSON. (William Thompson, of 14, Queen Street, Silversmith.)	

For Revising Assessor.

1	BACON. (Charles Bacon, of 29, New Street, Solicitor.)	
2	BYRON. (James Byron, of 45, George St., Commission Agent.)	
3	WILSON. (George Wilson, of 22, Hanover Square, Gentleman.)	

* With reference to this ballot paper, see sec. 62, p. 60.

Form of Back of Ballot Paper.

No. . Election of elective Auditors [*or* revising Assessors] for the borough of to be held on the day of 18 .

The number on the back of the ballot paper is to correspond with that on the counterfoil.

PART III.—FORMS RELATING TO WORKING-MEN'S DWELLINGS.*

FORM L.

Form of Grant by Corporation.

The Municipal Corporations Act, 1882.

(Working-Men's Dwellings.)

Borough of . Grant No. .

The mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to them by *A.B.* of hereby grant to the said *A.B.* (herein referred to as the grantee), and his heirs, the site following (that is to say) [*insert description*] with the appurtenances, subject to the following conditions (that is to say):

1. The grantee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, numbered , and under the superintendence and to the satisfaction of the corporation.

2. The grantee, his heirs and assigns, shall always maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts, and, in case of the taking down or destruction of the building shall not rebuild it except in manner approved by the corporation.

3. The grantee, his heirs or assigns, shall not add to or alter the character of the building without the consent of the corporation.

4. If at any time the grantee, his heirs or assigns, fail to fully observe and perform any stipulation of this grant, the corporation may, if they think fit, declare that the site is re-vested in the corporation; and thereupon the same, with the dwelling and other buildings thereon, shall become and be vested in the corporation, as if this grant had not been made.

In witness whereof, &c., this day of 18 .

(*Corporate Seal.*)

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* For provisions as to working-men's dwellings, see sec. 111, p. 95.

FORM M.

Form of Transfer of Grant.

The Municipal Corporations Act, 1882.

(Working-Men's Dwellings.)

Borough of . Transfer No. .
(Grant No. .)

A.B. of , by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C.D.* of , hereby grants and transfers to the said *C.D.* and his heirs the site comprised in the within-written* grant [*or* the grant No. under the said Act, dated the day of 188 †] with the appurtenances and with the dwelling and other buildings thereon, subject to the conditions on which that site is held immediately before the execution of this transfer.

In witness whereof, &c., this day of 18 .

A.B. (L.S.)

* [In case of transfer by indorsement.]
† [In case of transfer by separate deed.]

FORM N.

Form of Lease by Corporation.

The Municipal Corporations Act, 1882.

(Working-Men's Dwellings.)

Borough of . Lease No. .

The mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A.B.* of and of the rent and stipulations in this lease reserved and contained, and to be by him, his executors, administrators, or assigns, paid and performed hereby lease to the said *A.B.* (herein referred to as the lessee), his executors and administators, the site following (that is to say) [*insert description*] with the appurtenances, for the term of [*nine hundred and ninety-nine*] years from the day of , at the yearly rent (clear of all deductions) of , payable by two equal half-yearly payments on the day of and the day of in every year, the first thereof to be made on the day of , and the last thereof to be made in advance on the day of next before

the end of the term, and so that on the term being determined by re-entry a proportionate part of the rent for the fraction of the current half year up to re-entry be repayable.

And the lessee hereby covenants with the corporation that he, his executors, administrators, or assigns, will during the term pay the rent on the days and in manner aforesaid, and will pay all taxes, rates, and outgoings for the time being payable by the tenant in respect of the premises.

And this lease is made subject to the following conditions (that is to say):

1. The lessee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, and numbered , under the superintendence and to the satisfaction of the corporation.

2. The lessee, his executors, administrators, and assigns, shall always during the term maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts and, in case of the taking down or destruction of the building, shall not rebuild it, except in manner approved by the corporation.

3. The lessee, his executors, administrators, or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of years shall absolutely cease.

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)

A.B. (L.S.)

FORM O.

Form of Assignment of Lease.

The Municipal Corporations Act, 1882.

(Working-Men's Dwellings.)

Borough of . Transfer No. . (Lease No. .)

A.B. of (herein referred to as the assignor) by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C.D.* of , hereby assigns to the said *C.D.* (herein

referred to as the assignee,) his executors and administrators, the site comprised in the within-written lease* [*or* the lease No. under the said Act, dated the day of 18 †]. with the appurtenances, and with the dwelling and other buildings thereon, for the residue of the term of years, at the rent and subject to the stipulations and conditions at and subject to which that site is held immediately before the execution of this assignment.

And the assignee for himself, his executors and administrators, covenants with the assignor, his executors and administrators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, &c., this day of 18 .

A.B. (L.S.)
C.D. (L.S.)

* [In case of assignment by indorsement.]
† [In case of assignment by separate deed.]

PART IV.—FORMS RELATING TO BOROUGH BRIDGES.*

FORM P.

Form of Mortgage.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Mortgage No .

WE, the mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A.B.* of for the purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the borough fund and borough rate as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said *A.B.*, his executors, administrators, and assigns, from the day of the date hereof, until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the day of at [*place of payment*].

In witness whereof, &c., this day of 18 .

(*Corporate Seal.*)

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* As to Borough Bridges, see sec. 119, p. 101.

FORM Q.

Form of Transfer of Mortgage.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Transfer No. . (Mortgage No. .)

I, *A.B.* of in consideration of the sum of paid to me by *C.D.* of , do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, dated this day of , and made by the mayor, aldermen, and burgesses of the borough of , under the above-mentioned Act, for securing the sum of and interest thereon at per centum per annum [*or, if the transfer is by indorsement on the mortgage, insert instead of the words immediately following the word* "*assigns*," the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, &c., this day of 18 .

A.B. (L.S.)

THE NINTH SCHEDULE.*

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED.

PART I.

General References.

2 & 3 Vict., c. 93.—An Act for the establishment of county and district constables by the authority of justices of the peace (section 24).

5 & 6 Vict., 109.—An Act for the appointment of parish constables (section 21).

9 & 10 Vict., c. 74.—An Act to encourage the establishment of public baths and wash-houses (section 1).

10 & 11 Vict., c. 62.—An Act for the establishment of naval prisons, and for the prevention of desertion from Her Majesty's navy (section 13).

12 & 13 Vict., c. 35.—An Act for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament (section 2).

12 & 13 Vict., c. 82.—An Act to relieve boroughs, in certain cases, from contribution to certain descriptions of county expenditure.

13 & 14 Vict., c. 20.—An Act to amend an Act of the fifth and sixth years of Her present Majesty for the appointment and payment of parish constables (section 7).

13 & 14 Vict., c. 105.—An Act for facilitating the union of liberties with the counties in which they are situate (section 10).

14 & 15 Vict., c. 28.—An Act for the well-ordering of common lodging-houses (section 2).

* With reference to this Schedule, see sec. 242, p. 197. The Schedule enumerates Acts, which though they do not relate primarily to Municipal Corporations, and therefore are not repealed and reproduced in this Act, yet expressly refer to the Municipal Corporations Act of 1835, or some Act amending it. Section 242 contains general words, which will cover any similar Act happening not to be specified in the Ninth Schedule.

14 & 15 Vict., c. 34.—An Act to encourage the establishment of lodging-houses for the labouring classes (section 2).

16 & 17 Vict., c. 73.—An Act for the establishment of a body of naval coast volunteers, and for the temporary transfer to the navy, in case of need, of seafaring men employed in other public services (section 24).

16 & 17 Vict., c. 97.—The Lunatic Asylums Act, 1853 (section 9).

17 & 18 Vict., c. 71.—An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts.

17 & 18 Vict., c. 87.—An Act to make further provision for the burial of the dead in England beyond the limits of the metropolis (section 3).

17 & 18 Vict., c. 105.—The Militia Law Amendment Act, 1854 (section 11).

18 & 19 Vict., c. 57.—An Act further to amend the laws relating to the militia in England (section 7).

18 & 19 Vict., c. 121.—The Nuisances Removal Act for England, 1855.

19 & 20 Vict., c. 69.—An Act to render more effectual the police in counties and boroughs in England and Wales.

20 & 21 Vict., c. 81.—An Act to amend the Burial Acts.

22 & 23 Vict., c. 40.—An Act for the establishment of a reserve volunteer force of seamen, and for the government of the same (section 25).

23 & 24 Vict., c. 68.—An Act for the better management and control of the highways in South Wales.

25 & 26 Vict., c. 61.—An Act for the better management of highways in England.

26 & 27 Vict., c. 13.—An Act for the protection of certain garden or ornamental grounds in cities and boroughs.

26 & 27 Vict., c. 97.—The Stipendiary Magistrates Act, 1863 (section 2).

28 & 29 Vict., c. 126.—The Prison Act, 1865 (section 4).

30 & 31 Vict., c. 102.—The Representation of the People Act, 1867.

31 & 32 Vict. c. 22.—The Petty Session and Lock-up House Act, 1868 (section 3).

31 & 32 Vict., c. 46.—The Boundary Act, 1868 (First Schedule).

31 & 32 Vict., c. 58.—The Parliamentary Electors Registration Act, 1868.

31 & 32 Vict., c. 125.—The Parliamentary Elections Act, 1868 (sections 43 and 45).

31 & 32 Vict., c. 130.—The Artizans and Labourers Dwellings Act, 1868 (section 3).

33 & 34 Vict., c. 75.—The Elementary Education Act, 1870 (section 3).

33 & 34 Vict., c. 78. –The Tramways Act, 1870 (Schedule A.).
34 & 35 Vict., c. 56.—The Dogs Act, 1871 (Schedule).
34 & 35 Vict., c. 105.—The Petroleum Act, 1871 (section 2).
35 & 36 Vict., c. 38.—The Infant Life Protection Act, 1872 (First Schedule).
35 & 36 Vict., c. 91.—An Act to authorize the application of funds of municipal corporations and other governing bodies in certain cases.
38 & 39 Vict., c. 17.—The Explosives Act, 1875 (section 108).
38 & 39 Vict., c. 55.—The Public Health Act, 1875 (section 4).
38 & 39 Vict., c. 83.—The Local Loans Act, 1875 (section 34).
39 & 40 Vict., c. 56.—The Commons Act, 1876 (section 37).
40 & 41 Vict., c. 21.—The Prison Act, 1877 (section 59).
41 & 42 Vict., c. 49.—The Weights and Measures Act, 1878 (Fourth Schedule).
41 & 42 Vict., 74.—The Contagious Diseases (Animals) Act, 1878 (sections 7 and 66).
41 & 42 Vict., c. 77.—The Highways and Locomotives (Amendment) Act, 1878 (section 38).

PART II.

Particular References.

14 & 15 Vict., c 55.—An Act to amend the law relating to the expenses of prosecutions, and to make further provisions for the apprehension and trial of offenders in certain cases:
In section 24, for Schedule C. to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.
33 & 34 Vict., c. 91.—The Clerical Disabilities Act, 1870:
In the First Schedule, for section 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.

APPENDIX.

THE BALLOT ACT, 1872.*

(So far as it relates to Municipal Elections.)

(35 & 36 Vict., c. 33.)

An Act to amend the Law relating to Procedure at Parliamentary and Municipal Elections.

[18*th July*, 1872.]

WHEREAS it is expedient to amend the law relating to procedure at parliamentary and municipal elections:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PARLIAMENTARY ELECTIONS.

PROCEDURE AT ELECTIONS.

Poll at Elections.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper

* The sections which apply exclusively to parliamentary elections are omitted. With reference to the application of the Ballot Act to municipal elections, see secs. 58 and 62 of the Municipal Corporations Act, 1882, and secs. 29 and 30 of this Act. pp. 56, 60, 260, 261.

shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil; and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back. (*a*)

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted. (*b*)

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return. (*c*)

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer. (*d*)

(*a*) The provisions of this section are by sec. 58 of the Municipal Corporations Act, 1882 (p. 56), made applicable to the poll in a contested election of councillors so far as circumstances admit.

The ballot paper is to be in the form given in the Second Schedule to this Act, and must be in accordance with the requirements of Rule 22 (Schedule I).

As to the poll in the case of the election of elective auditors and revising assessors, see sec. 62 of the Municipal Corporations Act, 1882, p. 60; see

also secs. 29 and 30 of this Act, pp. 260, 261. For form of ballot paper to be used when the election of elective auditors and that of revising assessors are held at the same time, see Eighth Schedule to the Municipal Corporations Act, 1882, p. 237.

In the case of a "tendered ballot paper," which is provided for by Rule 27 in the First Schedule to this Act, and which is to be used where a person claims to vote after another person has voted in his name, the ballot paper must be of a colour different from that of the others used at the poll. As the ballot papers are to have counterfoils, it is desirable that they should be bound up in books in the same manner as receipt or check books. The numbering of the ballot papers and counterfoils is for the purpose of identifying the voting papers in the case of a scrutiny; and the ballot papers at any one election, at whatever station they are used, ought to be numbered in a consecutive series.

The official mark on the ballot paper is to be visible on both sides of the paper, and either a perforating or embossing stamp should be used for the purpose, or the papers should be stamped on both sides.

The number of the voter on the register is to be entered on the counterfoil in addition to the number previously referred to.

As to the "presiding officer" and his responsibilities in connection with the election, see secs. 10 and 11, and Rules 21, 47, and 50.

In a Memorandum of the Home Office, the effect of the several rules to be observed with regard to *the mode of voting in ordinary cases* is given as follows:

"When the voter comes up to vote, the presiding officer or his clerk (see Rule 50) will ascertain that he is entitled to vote at that particular station (Rule 18). He will then mark one of the official ballot papers with the official mark, so that it be visible on both sides; call out the number, name, and description of the voter, as stated in the copy of the register; enter such number on the counterfoil of the ballot paper; place against the number of the voter in the register a tick, which will denote that the voter has received a ballot paper, but will not denote the particular ballot paper which he has received; and will then deliver the ballot paper to the voter.

"The voter, having received his ballot paper, is to proceed at once to one of the compartments, is there secretly to mark his ballot paper, and fold it up so as to conceal the mark or marks which he has made, and so as to leave the official mark visible on the back; and to take it so folded, without showing the front of the paper to any person, to the presiding officer, show him the official mark, place the ballot paper at once in the ballot box, and immediately leave the station.

"The presiding officer must take care that no person interferes with the voter while he is giving his vote, puts into the ballot box any paper which has not the official mark on the back, takes a ballot paper out of the station, or otherwise infringes the provisions of secs. 3 and 4. If any person attempts to put into the ballot box any ballot paper which has not the official mark on the back, or to take any ballot paper out of the station, or in any other way to infringe the provisions of secs. 3 or 4, the presiding officer should order him to be arrested, or at all events removed (see secs. 3 and 9)."

As to the *mode of voting in exceptional cases*, the Memorandum states as follows:

"In three cases only is the ballot paper allowed to be marked by any person other than the voter himself, and then only by the presiding officer. These are—

"(1.) Persons incapacitated by blindness or any other physical cause.

"(2.) Jews, if the polling takes place on a Saturday, and they object on religious grounds to mark their votes; and

"(3) Persons unable to read.

"If a voter declares that he is unable to read, he must make before the presiding officer a declaration of inability to read, in the form prescribed in the Second Schedule. This declaration must be read by the presiding officer to the voter, signed by the voter with his mark in the presence of the presiding

officer, attested by the presiding officer, and kept by him to be sent to the returning officer.

"In any of these three cases the presiding officer, or one of his clerks, is, in the presence of the personation agents, if they are in attendance (see Rule 55), to mark a ballot paper in the way directed by the voter, place it in the ballot box, and enter the name and number of the voter on a list headed 'the list of votes marked by presiding officer,' mentioning in such list the reason why the vote has been so marked (Rule 26)

"It must be remembered that the declaration of secrecy, and the penalties under sec. 4, apply to votes given under these circumstances.

"The mode of tendering a vote where a person claims to vote after another person has already voted in his name, is prescribed by Rule 27."

(*b*) In *Woodward* v. *Sarsons and Sadler* (L. R., 10 C. P. 733; 44 L. J., C. P. 293; 32 L. T., N.S. 867), it was held that this and the other sections in the body of the Act are absolute enactments, which must be obeyed or fulfilled exactly; whilst the rules in the First Schedule and the forms in the Second Schedule are only directory enactments, and that it is sufficient if the directory enactments are obeyed or fulfilled substantially. The result of sec. 2 is that the ballot paper must be marked so as to show that the voter intended to vote for some one, and so as to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all, or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to any other available facts, to identify the way in which he has voted. If these requirements are substantially fulfilled, there is no enactment or rule of law by which a ballot paper can be treated as void; and if the requirements are not substantially fulfilled, the ballot paper is void, and should not be counted. In the case referred to it appeared that in two ballot papers the voters had written the name of the candidate for whom the votes were given instead of making a cross. In five cases, instead of one cross there were two; and in one instance there were three. Two voters made a stroke in addition to the cross, another added the letter P, and another marked the ballot paper with a star instead of a cross. One voter partly struck out the name of one of the candidates, and another signed his own name. There were also eight ballot papers marked with a cross placed on the left instead of the right hand side of the candidate's name. These several votes were allowed by the returning officer; and on a petition against the election it was contended that they should have been rejected, by reason of the ballot papers by which they were given bearing writings or marks by which the votes could be identified, or because they were void for uncertainty. One of the points raised in the special case for the opinion of the Court of Common Pleas was, as to whether or not these votes were valid. Applying the views stated above to the votes in question, the ballot paper bearing the voter's signature was of course held to be void. The writing by the voter of the name of the candidate might give too much facility, by reason of the handwriting, to identify the voter; and on this ground, though with some hesitation, the Court decided that the ballot papers on which the candidate's name was written were bad. The mere fact of more than one cross being marked on the ballot paper was not considered to be a substantial breach of the statute, or to vitiate the vote. If, however, there was evidence of an arrangement that the voters should place two or more crosses, so as to indicate the voters who had used the ballot paper so marked, then the papers, upon such proof being given, should be rejected. The same reasoning was held to apply to the cases where the cross was made on the left instead of the right hand side of the candidates' names, as well as to those where there were marks in addition to the cross, and the star in lieu of a cross.

In the same case it appeared that at one of the polling stations ballot papers were issued marked upon the face of them with the number of the voter appearing on the burgess roll, although such number should only have been

entered on the counterfoil. Nearly three hundred papers thus marked were rejected by the returning officer, as by a reference to the burgess roll the way in which a voter had voted could without any difficulty be identified. Following the rule above alluded to, the Court confirmed the view taken by the returning officer as to the invalidity of the whole of the votes recorded in those papers.

In the case of the *Berwick Election Petition* (44 L. T., N.S. 289), it appeared that one of the ballot papers was faintly marked in the square opposite to the name of one of the candidates by several marks or strokes slightly indented upon the paper, but the marks did not discolour the paper, and it did not appear whether they had been made with a pencil or with a blunt knife or a piece of wood or other instrument. It was contended that the marking left it uncertain whether the voter intended to vote at all. The vote was, however, allowed by the Court. Another ballot paper was marked to the right of the paper with a large cross. Each of the lines forming it was partly in the square of one of the candidates and partly in the square of another, but rather the greater part of each line was in the square of one of the candidates, in which was also the point of intersection of the two lines. The vote was allowed for the candidate in whose square the actual point of crossing was. Another ballot paper was marked with a cross on the back of the paper just upon the name of one of the candidates, which was observable by the force of the printing impression upon the back as well as upon the front of the paper. It was argued that the intention of the voter was clear, and that the voter was evidently of opinion that "opposite" meant on the other side of the paper. The vote was disallowed, Lopes, J., observing that to allow the vote would endanger the secrecy of the voting. Another ballot paper had an ink-mark of an uncertain character on the bottom of the paper below the name of one of the candidates. The vote was disallowed.

In *re Athlone Election Petition*, 1874, it appeared that thirteen of the ballot papers were marked with a cross opposite to the name of a candidate, and on the right hand side, but in the same column or compartment of the ballot papers as the name of the candidate. The votes were rejected by the sheriff, but the Court of Common Pleas for Ireland held that they ought to have been received by him.

In *re Wigtown Election Petition*, 1874, the Lords of the Second Session held to be valid certain votes which were objected to on the ground that the papers were not marked with the materials provided by the returning officer—viz., blacklead pencils—but with ink.

(*c*) As to agents in the case of a municipal election, see sec. 58 (6) of the Municipal Corporations Act, 1882 (p. 56).

It rests with the returning officer alone to decide as to the validity of votes, and he cannot, therefore, delegate the duty.

In the case of a municipal election, no return is to be made to the Clerk of the Crown in Chancery.

(*d*) This provision as to the voting of a returning officer does not apply in the case of a municipal election. Sec. 58 (5) of the Municipal Corporations Act, 1882 (p. 56), provides that where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.

OFFENCES AT ELECTIONS.

Offences in respect of Nomination Papers, Ballot Papers, and Ballot Boxes.

3. Every person who,—

(1.) Forges or fraudulently defaces or fraudulently destroys

any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged ; (*a*) or

(2.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper ; (*b*) or

(3.) Without due authority supplies any ballot paper to any person ; or

(4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in ; (*c*) or

(5.) Fraudulently takes out of the polling station any ballot paper ; or

(6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election ;

shall be guilty of a misdemeanour, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

(*a*) This provision as to nomination papers, does not apply to a municipal election. The Municipal Corporations Act, 1882, by sec. 74, p. 65, provides, that if any person forges or fraudulently defaces, or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour; and that an attempt to commit any such offence shall be punishable as the offence is punishable.

(*b*) In committee on the Bill, the Solicitor-General stated, in reply to a question as to the meaning of the words "fraudulently defaces," as applied to nomination and ballot papers, that defacing was either erasing the names on the papers, or covering them with ink so as to obliterate them, or otherwise making them illegible. It would be for a jury to determine upon the evidence whether the act was done with a fraudulent intent. He further stated that the word "forge" simply meant to fabricate, and that the offence was that of fabricating a ballot paper, or the official mark on a ballot paper.

(*c*) A prosecution having been instituted against a deputy returning officer, who had presided at a booth during a municipal election, for having fraudulently placed seventeen different papers, purporting to be, but to his knowledge not being ballot papers, in the ballot box, a county court judge made an order under Rule 64 in the First Schedule of the Act, directing the town clerk of the borough, to produce and show, for the purpose of the prosecution, the rejected ballot papers relating to the election for the ward, and certain counterfoils of ballot papers, counted ballot papers, and spoilt ballot papers, and to open the sealed packet containing those documents, and the marked copy of the register, and to take all such proper means as he should deem necessary, in order that the mode in which the particular voter had voted should not be discovered, and further ordered that no person should be allowed to see the face of the counted ballot papers. At the trial of the indictment, Blackburn, J. allowed the counterfoils and marked register produced under the order to be given in evidence, and the face of the voting papers to be inspected, so as to show how the votes appeared to have been given. A verdict of guilty was entered against the prisoner, but it was admitted that if the counterfoils had not been inspected, there would not have been any evidence against him, and that if the ballot papers had not been opened so as to show that all the false votes were on one side, the evidence would not have been so strong, and the verdict might have been different. The question for the court was, whether it was wrong under the circumstances, to allow the counterfoils and the marked register to be given in evidence, and to allow the face of the voting papers to be inspected, so as to show how the votes purported to be given. For the prisoner it was contended that the county court judge had no power to make such an order as he did in this case, unless a municipal election were in question. The power of the county court judge would appear from rule 64, to be but ancillary to that of the election tribunal, and he could only make such an order for the purposes of such a court. If the order was valid, it had been disregarded, as it expressly declared that no person should be allowed to see the face of any counted ballot papers. The court held that the order of the county court being within the terms of the Act was valid, and that the documents taken out of the packets and produced under the order during the trial of an indictment against the prisoner for an offence against the Ballot Act, were properly admissible in evidence. *R.* v. *Beardsall*, L. R., 1 Q. B. D. 452; 45 L. J., M. C. 157; 34 L. T., N.S. 660.

Infringement of Secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling

station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. (*a*)

Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper.

No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote. (*b*)

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

(*a*) Before the opening of the poll, every returning officer, and every officer, clerk, or agent authorized to attend at a polling station, or at the counting of the votes, is to make a statutory declaration of secrecy. The form of declaration is given in the Second Schedule (p. 277). The declaration in the case of a returning officer is to be made in the presence of a justice of the peace; and in the case of any other officer, or an agent, in the presence either of a justice of the peace or of the returning officer (Rule 54, Schedule I., p. 273). No similar declaration appears to be requisite in the case of a candidate, although he himself undertake the duties of or assist his agent, and may attend at any place at which his agent may, under the provisions of the Act, attend.

In *Stumm-ought* v. *Halline* (L. R., 4 C. P. D. 191; 48 L. J., M. C. 89; 40 L. T., N.S. 580; 27 W. R. 620), it appeared that a personating agent, in attendance at a polling station in connection with the election of a councillor, left the polling station without the permission of the presiding officer, and took with him the part of the burgess roll in which he had ticked the names of the persons who had applied for ballot papers. On his return in about a quarter of an hour, when asked by the presiding officer where his part of the burgess roll was, he replied that he was not going to work for nothing, and as his committee had not supplied him with any refreshments he had given up his part of the burgess roll to them. The fact that the part of the burgess roll was left in the committee room of the candidate by whom he was employed was admitted, but there was no evidence that any person had looked at it whilst it was in the committee room, or had obtained any information from it. It was held that there was not sufficient evidence to warrant a conviction under this section, as there was no proof that the information as to the voters was actually communicated to any person. In order to justify a conviction it must be shown that the information reached the mind of some person, and it was not enough to show that means of acquiring the information had been afforded.

(*b*) No penalty under this section attaches to a voter who displays his ballot paper, so as to make known for or against whom he has marked his vote, although it is an offence on the part of any person to directly or indirectly induce a voter to do so. Sec. 2, however, requires that the voter shall mark

his vote "secretly" on the ballot paper, and afterwards fold it up "so as to conceal his vote;" and Rule 25 (p. 264) requires that he shall put the ballot paper "so folded up" into the ballot box.

DUTIES OF RETURNING AND ELECTION OFFICERS.

General Powers and Duties of Returning Officers.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

* * * * *

The mayor in a municipal election is to provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and is to appoint officers for taking the poll and counting the votes. (See Municipal Corporations Act, 1882, Third Schedule, Part III., No. 3, p. 226.)

The provision in this section as to nomination papers does not apply to a municipal election. In a municipal election the town clerk is to provide nomination papers, and supply any burgess with as many nomination papers as may be required. He is also, at the request of any burgess, to fill up a nomination paper. See Rule 6 in Part II. of Third Schedule to Municipal Corporations Act, 1882 (p. 223).

As to polling stations and their fittings, see sec. 14 of this Act, and Rules 15 and 17 in the First Schedule. Rule 16 in that schedule which required that at least one compartment should be provided for every 150 electors entitled to vote at a polling station, does not now apply to a municipal election; but the mayor is to furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation as in the judgment of the mayor may be necessary for effectually taking the poll at the election. (See Rules 1 and 4 in Part III. of Third Schedule to the Municipal Corporations Act, 1882, p. 225, 226.) A municipal election is not to be held in any church, chapel, or other place of public worship, see p. 63.

With respect to ballot boxes, see sec. 14 of this Act, and Rule 23 in First Schedule. As to ballot papers, see Rules 22 and 27. It devolves on the mayor to furnish each presiding officer with such number of ballot papers as in the judgment of the mayor may be necessary for effectually taking the poll at the election (see p. 226). With regard to stamping instruments and copies of register, see Rule 20.

Expenses of a municipal election are to be defrayed as provided by the Municipal Corporations Act, 1882, see p. 229.

Keeping of Order in Station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorized in writing by the returning officer to remove him; and the person so removed

shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

A candidate at a municipal election has a right as such candidate to be present in the polling station during the polling, although he does not either himself undertake the duties of an agent or assist his agent in the performance of such duties; and therefore the presiding officer has no authority to exclude such candidate therefrom, if he does not interfere with the polling or in any other way misconduct himself. *Clementson* v. *Mason*, L. R., 10 C. P. 209; 44 L. J., 171; 32 L. T., N.S. 325.

Powers of Presiding Officer and Administration of Oaths, &c.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorized by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorized by this Act to be taken before him.

With regard to the hour for commencing and closing a poll in the case of a municipal election, see sec. 58 (3) (4) of the Municipal Corporations Act, 1882, p. 56.

As to the questions which may be put to a person offering to vote in a municipal election, see sec. 59 of the Municipal Corporations Act, 1882, p. 57.

As to declaration of secrecy to be made before the returning officer or justice of the peace, see Rule 54 in the First Schedule to this Act.

Liability of Officers for Misconduct.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds. (*a*)

Section fifty of the Representation of the People Act, 1867, (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate,) shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk (*b*.)

(*a*) In *Pickering* v. *James*, L. R., 8 C. P. 489; 42 L. J., C. P. 217; 29 L. T., N.S. 211; 21 W. R., 786; it was alleged that at a municipal election the defendant, as presiding officer, delivered to certain of the voters, ballot papers not having the official mark, and that he failed to ascertain that the ballot papers had not the official mark when they were placed in the ballot box. One of the candidates, Thomas Startin, was declared to be elected by a majority of three votes. The unsuccessful candidate petitioned against the return, but on the hearing of the petition certain of his votes were struck off, on the ground that the ballot papers did not bear the official mark; and by reason of the neglect of the returning officer, and the loss of these votes, he was prevented from being elected, and lost the expense he was put to in endeavouring to procure his election, and in prosecuting the petition. It was further alleged that the presiding officer was not present, so that the voters could not show him the official mark, and that he wilfully neglected to perform the duties devolving on him. The penalty of £100 for the omission of duty on the part of the presiding officer was therefore claimed. It was held that the presiding officer, having undertaken and entered upon a ministerial duty, was liable for the negligent performance of the same, but that he was not responsible for the negligence of his clerk in the performance of such duties as he might legally delegate to him, as the relation of master and servant did not exist between them; and that when the presiding officer or clerk commits a breach of duty, he is liable to an action for damages, though the breach be not wilful or malicious.

It was further held that it is the duty of the presiding officer, or a clerk deputed by him, whichever of them in fact undertakes it, to deliver to the voters, ballot papers, bearing the official mark, and to be present, so that each voter, before placing his ballot paper in the box, can show to him the official mark on the back; but *primâ facie*, and in the absence of it appearing that a clerk has been deputed by the presiding officer to fulfil it, the duty lies on such officer. The Court were divided in opinion as to whether there is a similar duty as to ascertaining before the voters put their ballot papers in the box whether they are properly marked with the official mark. Keating, J., and Brett, J., held that there was; and Bovill, C. J., and Grove, J., that there was not.

(*b*) Section 50 of the Representation of the People Act, 1867, provides that any returning officer for any county or borough, his deputy, partner, or clerk, or either of them, who shall act as agent for any candidate in the management or conduct of his election as a member to serve in Parliament for such county or borough, shall be guilty of a misdemeanour.

MISCELLANEOUS.

Prohibition of Disclosure of Vote.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

See also sec. 104 of the Municipal Corporations Act, 1882, p. 89.

Non-compliance with Rules.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

In *Northcote* v. *Pulsford*, L. R., 10 C. P. 476; 44 L. J., C. P. 217; 32 L. T., N.S. 102; 23 W. R., 700; it appeared that at a municipal election, one of the nominations of a candidate for the office of councillor was bad, but by another nomination he was duly nominated. There were more candidates than there were vacancies to be filled up, and a poll was taken. In drawing up the ballot paper the mayor entered the name of the candidate twice, as if he were two candidates; and described him in one entry—viz., No. 6 according to his description in his correct nomination paper, and in the other entry—viz., No. 5—according to his description in the invalid nomination paper. A number of voters voted for him by putting a cross opposite to his name in the entry No. 6; whilst others, who had not so voted, voted for him by putting a cross opposite to his name in No. 5. If both could be counted as votes given for him, he was duly elected; but if they could not be so counted, he was not elected. It was held that the ballot paper, which ought to contain a list of the candidates, and not of their nominations, was wrongly drawn up, but that it was a mistake which, being in the use of the form given in Schedule II. of the Act, and not affecting the result of the election, was cured by this section; and the number of votes which had really been given for the candidate entitled him to be returned as elected.

See also notes (*b*) on sec. 2 as to the effect of this section with regard to the rules and forms prescribed.

Use of Municipal Ballot Boxes, &c., for Parliamentary Election, and vice versâ.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

With respect to parliamentary elections, sec. 6 of the 38 & 39 Vict., c. 84, provides that in any case to which sec. 14 of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections; and the Court, upon taxation of his accounts, shall have regard to the provisions of this section.

Construction of Act.

15. This part of this Act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this Act.

PART III.

PERSONATION.

Definition and Punishment of Personation.

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections:

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years together with hard labour. It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

* * * *

The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

PART IV.

MISCELLANEOUS.

Effect of Schedules.

28. The Schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

Definitions.

29. In this Act—

The expression "municipal borough" means any place for the time being subject to the Municipal Corporation Acts, or any of them:

The expression "Municipal Corporation Acts" means—

(*a.*) As regards England, the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same:

The expression "municipal election" means—

(*a*) As regards England, an election of any person to serve the office of councillor, auditor, or assessor of any municipal borough, or of councillor for a ward of a municipal borough.

Application of Act.

30. This Act shall apply to any parliamentary or municipal election which may be held after the passing thereof.

Short Title.

33. This Act may be cited as The Ballot Act, 1872, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine; and on the said day the Acts in the fourth, fifth, and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this Act but such proceeding shall be carried on as if this Act had continued in force.

The Ballot Act is continued in force until the 31st of December, 1883, by the Expiring Laws Continuance Act, 1882, (45 & 46 Vict., c. 64.)

SCHEDULES.

FIRST SCHEDULE.

PART I.

RULES FOR PARLIAMENTARY ELECTIONS.*

The Poll.

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling

* With regard to the effect of a non-compliance with the Rules contained in this Schedule, see note (*b*) to sec. 2 of this Act.

place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.

In a municipal election it devolves on the mayor to provide the polling stations. See note to sec. 8 of this Act. See also Rule 17.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

The mayor is, at least four days before the day of election, to give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations. See Municipal Corporations Act, 1882, Third Schedule, Part III., No. 2, p. 226.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

In the case of a municipal election, it devolves on the mayor to provide the materials for voters to mark the ballot papers, the stamping instruments, &c. See note to sec. 8 of this Act.

For definition of the term "register of voters," in the case of municipal elections, see Rule 64 *a*.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

It devolves on the mayor in the case of a municipal election to appoint the officers for taking the poll. See note to sec. 8 of this Act.

The returning officer may, if he thinks fit, himself preside at one of the polling stations (Rule 47).

As to the liability of a presiding officer for misconduct, see note to sec. 11.

With regard to the powers of the presiding officer for keeping order, see sec. 9.

With respect to the question as to the right of a candidate to be present at the station, see note to sec. 9.

The Clerks referred to are those appointed under sec. 8, as modified in the case of a municipal election. With reference to the "agents of the candidates," see sec. 58 (6) of the Municipal Corporations Act, 1882, p. 56.

22. Every ballot paper shall contain a list of the candidates as described in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act, or as near thereto as circumstances admit, and shall be capable of being folded up.

For form of ballot paper, see Schedule II. to this Act, and for form of ballot paper when the election of elective auditors and that of revising assessors are held at the same time, see Eighth Schedule of the Municipal Corporations Act 1882, p. 237.

"Tendered ballot papers" of a colour differing from the other ballot papers, must be provided (Rule 27).

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector,

to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

For provisions with regard to taking the poll, see sec. 2, and directions for guidance of voters, Schedule II. The counterfoil and the ballot paper will both be numbered ; the counterfoil having a number on the face, and the ballot paper having the same number on the back. The number of the voter on the register will also be entered on the counterfoil ; so that, if necessary under Rule 41, the ballot paper of any particular voter may be traced. The number of the voter on the register would give a reference to the counterfoil of his ballot paper, and by the number of the counterfoil, the ballot paper—which would have the same number—could be identified.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box ; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

As to the penalty for directly or indirectly inducing any voter to display his ballot paper after it has been marked by him, so as to make known the name of the candidate for or against whom he has marked his vote, see sec. 4.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

The exception in favour of Jews is made in consequence of many persons of the Jewish persuasion considering themselves forbidden by their religious law from writing on Saturday. In the course of the discussion on this clause, a proposal that the voter in these cases should make a declaration as to his conscientious objection was negatived. It was remarked as an anomalous result, that a Jew who is unable to read may vote without making a declaration when the election is on a Saturday, but must make the declaration if the election takes place on any other day of the week.

The rule will also meet the case of persons who, through physical infirmity, are unable to record their votes, but the presiding officer cannot leave the polling station to take the vote.

An amendment was proposed which would have rendered it necessary that the presiding officer should himself mark the vote on the ballot paper, instead of causing it to be so marked, but it was objected to on the ground of the delay in the polling which such a requirement would occasion.

For form of declaration of inability to read, see Schedule II., p. 278.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

With respect to the questions which may be put in the case of voters in municipal elections, see sec. 59 of the Municipal Corporations Act, 1882, p. 57.

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

(1.) Each ballot box in use at his station, unopened but with the key attached; and

(2.) The unused and spoilt ballot papers, placed together; and

(3.) The tendered ballot papers; and

(4.) The marked copies of the register of voters, and the counterfoils of the ballot papers; and

(5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver such packets to the returning officer.

In the case of *Stowe* v. *Jolliffe*, 9 L. R., C. P. 446; 43 L. J., C. P. 173; 30 L. T., N.S. 299; 22 W. R. 946, it appeared that the marked copy of the register of voters had been placed in the same packet as the counterfoils of the ballot papers. Brett, J., observed: "According to my view of Rule 29, the numbers do not denote what is to be put in one packet, but merely divisions of subjects. If this matter had been strictly and properly conducted, I think the marked register would have been in a sealed packet by itself." It is obviously important that the marked register and the counterfoils should be in separate packets, as Rule 42 contemplates that the marked register should be open to public inspection, subject to certain regulations; whilst under Rules 41 and 64 (*b*) the counterfoils are only to be inspected on an order of the House of Commons, a tribunal having cognizance of election petitions, or the county court. In the case referred to, a rule was made authorizing the Clerk of the Crown to open the sealed packet containing the marked register of voters and the counterfoils, and to permit the inspection and copying of the register; but no papers other than the register were to be inspected.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

As to appointment of agents in the case of a municipal election, see sec. 58 of the Municipal Corporations Act, 1882, p. 56. See also Rule 53.
With regard to the personal attendance of a candidate, see Rule 51.
As to the declaration of secrecy to be made by agents, see Rule 54.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

The non-attendance of agents at the counting of the votes will not in any way affect the validity of the proceedings (Rule 55).

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

In a memorandum issued by the Home Department, it is stated that it is obvious that the returning officer ought not to sanction the presence at the counting of the votes of any person other than the candidates and their agents, and his assistants and clerks, except for the purpose of assisting in the counting.

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seal of such of the agents of the

candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.

With respect to the votes which are not to be counted, see sec. 2.

In the case of a municipal election, no return is required to be made to the Clerk of the Crown in Chancery.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the Clerk of the Crown in Chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

In the case of a municipal election, no return is required to be made to the Clerk of the Crown in Chancery.

38. Lastly, the returning officer shall forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be

forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held ; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

In municipal elections the ballot papers and other documents are to be forwarded to the town clerk, Rule 64 (*b*).

39. The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer ; and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's Superior Courts, shall cause them to be destroyed.

In the case of municipal elections, the documents will be retained by the town clerk, and an order of the county court having jurisdiction in the borough or any part of the borough, or of any tribunal in which a municipal election is questioned, is to be substituted for an order of the House of Commons, or of the High Court of Justice.

The town clerk, with respect to the destruction of the ballot papers and other documents, will be subject to the directions of the town council of the borough. See Rule 64 (*b*).

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons or under the order of one of Her Majesty's Superior Courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return ; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production, as the House or court making the same may think expedient, and shall be obeyed by the Clerk of

the Crown in Chancery. Any power given to a court by this Rule may be exercised by any judge of such court at chambers.

This Rule, it will be observed, only refers to [illegible] papers. The inspection of counterfoils and the counted and rejected papers is provided for by Rule 41.

In the case of a municipal election, an order of the county court having jurisdiction in the borough, or any part thereof, in which a municipal election is questioned, is to be substituted for that of the House of Commons, or of the High Court of Justice. See Rule 41.

The order in the case of a municipal election will be made upon the town clerk.

This Rule as modified in the case of a municipal election applies to a School Board election. In July, 1877, an application was made in the name of *Yeatman* for a *mandamus* calling on the Judge of the County Court for the North to make an order for the inspection of the voting papers in the election of members of the School Board of London for the division of Lambeth. Mr. Yeatman was not returned as elected, and he alleged that he had not been credited with all his votes. In one polling district alone more than 500 of such votes [illegible] as he alleged, have been omitted. The Judge of the County Court had refused to make an order for an inspection of the ballot papers, being of opinion that the statements in the affidavit in support of the application were not strong enough to justify him in making the order. The Lord Chief Justice asked whether there was anything to show that if Mr. Yeatman had been credited with the votes, said to be omitted, it would have entitled him to be returned as a member of the board. It was replied that the affidavit did not go so far as that, as Mr. Yeatman had only seen some of the ballot papers at the counting of the votes, and he could not pledge himself as to the others. The court, under these circumstances, refused the Rule.

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

In *Stone* v. *Jolliffe* (9 L. R., C. P. 446; 43 L. J., C. P. 173; 30 L. T., N.S. 299; 22 W. R., 946), where an election petition had been presented, an affidavit was made by the petitioner's attorney that it was requisite for the purposes of the petition, and to enable him duly to prepare the case of the petitioner, that he should be allowed to inspect the rejected ballot papers, the counted ballot papers, and the counterfoils of the ballot papers, in the custody

of the Clerk of the Crown in Chancery; and the Court of Common Pleas were moved to make an order accordingly. The application as regards these documents was subsequently limited, the petitioner asking that the sealed packets containing the rejected ballot papers should be opened, and the backs only shown to the petitioner and his agent, the petitioner being willing to accede to the condition that care should be taken that the front of the rejected ballot paper should not be seen; and further, that inspection should be allowed of such of the counterfoils as had upon them a sequence number corresponding with the number on the rejected ballot papers. Brett, J., was in favour of the order being made. "The backs of the rejected ballot papers," he said, "would give the party no information without the corresponding counterfoils; but by comparing the sequence number on the counterfoil with the number on the register, it would be seen who voted, but not how he voted." Grove, J., held that, assuming that the court had power to grant inspection of these documents, a strong case should be made out to warrant it; and, in the present instance, no sufficient ground had been shown. Denman, J., concurred. He said: "It is not enough that inspection is asked for. The Court must be satisfied, by evidence on oath, that it is reasonably and *bonâ fide* required for the purpose of a petition questioning the election."

See also Rule 64 (*b*) as to municipal elections, and *R.* v. *Beardsall*, in note to sec. 3.

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

Leave to inspect the marked register of voters will be granted as of course, whether the petition against the return of a candidate does or does not pray for a scrutiny (*James* v. *Henderson*, 43 L. J., C. P. 238; 30 L. T., N.S. 527).

In the case of a municipal election, the regulations for the inspection of documents, and the fees for the supply of copies, are to be prescribed by the council of the borough, with the consent of one of her Majesty's Secretaries of State. See Rule 64 (*b*).

43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown or

his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be primâ facie evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

As to municipal elections, see Rule 64 (*b*).

General Provisions.

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

In a municipal election the mayor is to appoint the officers for taking the poll and counting the votes. See Municipal Corporations Act, 1882, Third Schedule, Part III., No. 3, p. 226.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorized to do by this Act at a polling station except ordering the

arrrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

As to the right of a candidate to attend at polling stations, see note to sec. 9 of this Act.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address have not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

As to the appointment of agents of a candidate at a municipal election, see sec. 58 (6) of the Municipal Corporations Act, 1882, p. 56.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

As to the appointment of agents of a candidate at a municipal election, see sec. 58 (6) of the Municipal Corporations Act, 1882, p. 56.

54. Every returning officer, and every officer, clerk, or agent authorized to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer: but no such returning officer,

officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

For form of declaration of secrecy required to be made by the persons referred to in this Rule, see Schedule II., p. 277.

55. Where in this Act any expressions are used requiring or authorizing or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

57. In this Act—

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

As to the appointment of agents of a candidate at a municipal election, see sec. 58 (6) of the Municipal Corporations Act, 1882, p. 56.

PART II.

RULES FOR MUNICIPAL ELECTIONS.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made :—

(*a.*) The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station :

(*b.*) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of part one of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely,

(*a.*) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty's Superior Courts; but an appeal from such county court may be had in like manner as in other cases in such county court:

(*b.*) The regulations for the inspection of documents and the fees for the supply of copies of documents, of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's Principal Secretaries of State; and subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough:

(*c.*) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

See also modifications in Third Schedule, Part III., to the Municipal Corporations Act, 1882, p. 225.

SECOND SCHEDULE.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

FORM OF BALLOT PAPER. (*a*)

Form of Front of Ballot Paper.

Counterfoil No.

NOTE:
The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.

1	BROWN (John Brown, of 52, George-st., Bristol, merchant.)
2	JONES (William David Jones, of High Elms, Wilts, Esq.)
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)
4	SMITH (Henry Sydney Smith, of 72, High-street, Bath, Attorney.)

Form of Back of Ballot Paper.

No.

Election for county [*or* borough, *or* ward]
18 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

(*a*) For form of ballot paper when the election of elective auditors and that of revising assessors are held at the same time, see form in Eighth Schedule to the Municipal Corporations Act, 1882, p. 237.

DIRECTIONS AS TO PRINTING BALLOT PAPER.

Nothing is to be printed on the ballot paper, except in accordance with this Schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names

of such candidate, shall be printed in large characters, as shown in the form ; and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

FORM OF DIRECTIONS FOR THE GUIDANCE OF THE VOTER IN VOTING, *which shall be printed in conspicuous characters, and placarded outside every Polling Station, and in every compartment of every Polling Station.*

The voter may vote for candidate .

The voter will go into one of the compartments, and with the pencil provided in the compartment, place a cross on the right hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and, leaving the compartment, will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer ; and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanour, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

FORM OF STATUTORY DECLARATION OF SECRECY.

I solemnly promise and declare, That I will not at this

election for do anything forbidden by section four of "The Ballot Act, 1872," which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

FORM OF DECLARATION OF INABILITY TO READ.

I, *A. B.*, of , being numbered on the Register of Voters for the county [*or* borough] of , do hereby declare that I am unable to read.

A. B., his mark,

day of .

I, the undersigned, being the presiding officer for the polling station for the county [*or* borough] of , do hereby certify that the above declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

Signed, *C. D.*,
Presiding Officer for the polling station for the county [*or* borough] of .

day of .

CORRUPT PRACTICES PREVENTION ACTS.

(PARLIAMENTARY ELECTIONS).*

CORRUPT PRACTICES PREVENTION ACT, 1854.

(17 & 18 Vict., c. 102.)

An Act to consolidate and amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parliament.

[10*th August*, 1854.]

WHEREAS the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient: And whereas it is expedient to consolidate and amend such laws, and to make further provision for securing the freedom of such elections: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

* * * *

Bribery Defined.

2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:

(1.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election:

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* The Municipal Corporations Act, 1882, by sec. 78, provides that "a person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments as if the corrupt practice had been committed at a parliamentary election." The provisions of the Corrupt Practices Prevention Acts, which are thus made applicable to municipal elections, are therefore appended.

(2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election:

(3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election:

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election:

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election:

And any person so offending shall be guilty of a misdemeanour, and in *Scotland* of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of one hundred pounds to any person who shall sue for the same, together with full costs of suit: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further Defined.

3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:

(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person, for

voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election:

(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election:

And any person so offending shall be guilty of a misdemeanour, and in *Scotland* of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of ten pounds to any person who shall sue for the same, together with full costs of suit.

Treating Defined.

4. Every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time either before, during, or after any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect.

Undue Influence Defined.

5. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter, either to give or to

refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanour, and in *Scotland* of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit.

Names of Offenders to be struck out of Register, and Inserted in separate List.

6. Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list to be entitled "the list of persons disqualified for bribery, treating, or undue influence," which last-mentioned list shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published.

No Cockades, &c., to be given at Elections.

7. No candidate before, during, or after any election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall for every such offence forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music or flags or banners, shall be deemed illegal payments within this Act.

* * * * *

Penalties how to be Recovered.

9. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence respectively shall be recover-

able by action or suit by any person who shall sue for the same in any of Her Majesty's superior courts at *Westminster*, if the offence be committed in *England* or *Wales*, and in any of Her Majesty's superior courts in *Dublin* if the offence be committed in *Ireland*, and in or before the court of sessions if the offence be committed in *Scotland*, and not otherwise.

Costs and Expenses of Prosecutions.

10. It shall be lawful for any criminal court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided always, that no indictment for bribery or undue influence shall be triable before any court of quarter sessions.

* * * *

In Cases of private Prosecutions, if Judgment be given for the Defendant he shall recover Costs from the Prosecutor.

12. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given.

Prosecutor not to be entitled to Costs unless he shall have entered into a Recognisance to conduct Prosecution and pay Costs.

13. It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognisance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of *certiorari* awarded at the instance of a defendant in an indictment), with the conditions following; that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Limitation of Actions.

14. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for

the offence committed shall be commenced against such person within the space of one year next after such offence against this Act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court out of which such writ or other process shall have issued; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

* * * *

Refreshments to Voters on the Days of Nomination or Polling declared Illegal.

23. And whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: Be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment, by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of forty shillings for each offence to any person who shall sue for the same, together with full costs of suit.

* * * *

In Actions for Penalties, Parties, &c., to be Competent Witnesses.

35. On the trial of any action for recovery of any pecuniary penalty under this Act, the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives, are competent and compellable to give evidence in actions and suits under the Act of the fourteenth and fifteenth Victoria, chapter ninety-nine, and "The Evidence Amendment Act, 1853," but subject to and with the exceptions contained in such several Acts: Provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party giving it.

* * * *

Short Title.

37. In citing this Act in any instrument, document, or proceeding, or for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices Prevention Act, 1854."

Interpretation of Terms.

38. Throughout this Act, in the construction thereof, except there be something in the subject or context repugnant to such construction * * * * the word "election" shall mean the election of any member or members to serve in Parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called; and the words "revising barrister" shall extend to and include an assistant barrister and chairman, presiding in any court held for the revision of the lists of voters or his deputy in *Ireland*, and a sheriff or sheriff's court of appeal in *Scotland*, and every other person whose duty it may be to hold a court for the revision and correction of the list or registers of voters in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in Parliament.

* * * *

Duration of Act.

39. This Act shall continue in force for one year next after the passing thereof, and thenceforth to the end of the then next session of Parliament.

This Act is continued in force until the 31st December, 1883, by the Expiring Laws Continuance Act, 1882 (45 & 46 Vict., c. 34).

CORRUPT PRACTICES PREVENTION ACT, 1858.

(21 & 22 Vict., c. 87.)

An Act to continue and amend the Corrupt Practices Prevention Act, 1854.

[*2nd August*, 1858.]

WHEREAS an Act was passed in the session holden in the seventeenth and eighteenth years of Her Majesty, chapter one hundred and two, "to consolidate and amend the laws relating to bribery,

treating, and undue influence at elections of members of Parliament;" and by an Act of the session holden in the nineteenth and twentieth years of Her Majesty, chapter eighty-four, the said first-mentioned Act was continued until the tenth day of August, one thousand eight hundred and fifty-seven, and thenceforth to the end of the then next session of Parliament: And whereas it is expedient that the said first-mentioned Act should be further continued and amended: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

* * * *

Definition of Candidates.

3. So much of section thirty-eight of the said first-mentioned Act as defines the words "candidate at an election" shall be repealed; and in the construction of the said Act as amended by this Act the words "candidate at an election," and the words "candidate at any election," shall include all persons elected to serve in Parliament at such election, and all persons nominated as candidates at such election, or who shall have declared themselves candidates on or after the day of the issuing of the writ for such election, or after the dissolution or vacancy in consequence of which such writ shall have been issued: Provided that nothing herein contained shall be construed to impose any liability on any person nominated without his consent.

* * * *

Duration of Act.

5. The said first-mentioned Act as amended by this Act shall continue in force until the tenth day of August, one thousand eight hundred and fifty-nine, and thenceforth to the end of the then next session of Parliament.

CORRUPT PRACTICES PREVENTION ACT, 1863.

(26 Vict., c. 29.)

An Act to amend and continue the law relating to Corrupt Practices at Elections of Members of Parliament.

[*8th June*, 1863.]

WHEREAS the "Corrupt Practices Prevention Act, 1854," as amended by an Act of the session holden in the twenty-first and

twenty-second years of Her Majesty, chapter eighty-seven, is limited to continue in force until the first day of September, one thousand eight hundred and sixty three, and from thence until the end of the next session of Parliament; and it is expedient further to amend the said Acts and to continue the same in manner hereinafter mentioned: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short Title.

1. The expression "the Corrupt Practices Prevention Acts" shall include this Act and the said Act of the twenty-first and twenty-second years of the reign of Her present Majesty, and the Corrupt Practices Prevention Act, 1854, as amended by the said other Acts.

* * * *

LEGAL PROCEEDINGS.

Sec. 14 of 17 & 18 Vict., c. 102, extended to Misdemeanours, &c.

5. The provisions of the fourteenth section of the Corrupt Practices Prevention Act, 1854, shall extend to a misdemeanour or to any other offence under the Corrupt Practices Prevention Acts not punishable by a penalty or forfeiture, as well as to proceedings for any offence punishable by a penalty or forfeiture.

General Allegations sufficient in Indictments.

6. In any indictment or information for bribery or undue influence, and in any action or proceeding for any penalty for bribery, treating, or undue influence, it shall be sufficient to allege that the defendant was at the election at or in connexion with which the offence is intended to be alleged to have been committed guilty of bribery, treating, or undue influence (as the case may require); and in any criminal or civil proceedings in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person therein named having been a candidate thereat.

Evidence of Witness on Election Committee and before Commissions.

7. No person who is called as a witness before any election committee, or any commissioners appointed in pursuance of the

Act of the session holden in the fifteenth and sixteenth years of the reign of Her present Majesty, chapter fifty-seven, shall be excused from answering any question relating to any corrupt practice at, or connected with, any election forming the subject of inquiry by such committee or commissioners, on the ground that the answer thereto may criminate or tend to criminate himself: Provided always, that where any witness shall answer every question relating to the matters aforesaid which he shall be required by such committee or commissioners (as the case may be) to answer, and the answer to which may criminate or tend to criminate him, he shall be entitled to receive from the committee, under the hand of their clerk, or from the commissioners, under their hands (as the case may be), a certificate stating that such witness was, upon his examination, required by the said committee or commissioners to answer questions or a question relating to the matters aforesaid, the answers or answer to which criminated or tended to criminate him, and had answered all such questions or such question; and if any information, indictment, or action be at any time thereafter pending in any court against such witness for any offence under the Corrupt Practices Prevention Acts, or for which he might have been prosecuted or proceeded against under such Acts, committed by him previously to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, the court shall, on production and proof of such certificate, stay the proceedings in such last-mentioned information, indictment, or action, and may, at its discretion, award to such witness such costs as he may have been put to in such information, indictment, or action: Provided that no statement made by any person in answer to any question put by or before such election committee or commissioners shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, civil or criminal.

* * * *

Continuance of Corrupt Practices Prevention Acts.

11. The Corrupt Practices Prevention Acts shall continue in force for a period of five years from the date of the passing of this Act, and from thenceforth until the end of the then next session of Parliament.

THE LOCAL LOANS ACT, 1875.

(38 & 39 Vict., c. 83.)

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities.

[13*th August*, 1875.]

WHEREAS it is expedient to amend the law relating to securities for loans contracted by local authorities:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(1.) PRELIMINARY.

Short Title.

1. This Act may be cited for all purposes as "The Local Loans Act, 1875."

Limits of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act.

Definition of Borrowing under Act.

4. A local authority shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by

the issue of debentures or debenture stock or annuity certificates, purporting to be created under its powers, or partly in one way and partly in another; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted.

(2.) DEBENTURES.

Regulations as to Debentures.

5. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified.

Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture, or of the interest thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.

The principal sum may be made payable to the bearer of the debenture, or to a person to be named therein, his executors, administrators, or assigns.

A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.

A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority.

There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.

A coupon making the interest therein mentioned payable to the person named therein or his order is in this Act referred to as a coupon payable to order.

A debenture under this Act shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than twenty pounds.

As to the composition for stamp duty on transfers, see the Inland Revenue Act, 1880 (43 & 44 Vict., c. 20), which by sec. 53 provides as follows:—(1) Where any debenture stock, corporation stock, municipal stock, or funded debt, by whatever name known, has been or shall be created and issued by the council of any city or municipal borough under the provisions of the Local Loans Act. 1875, or of any other Act, the council may, with the sanction of the Commissioners of Her Majesty's Treasury, agree with the Commissioners for the payment to them, by way of composition for the stamp duty on transfers of such stock, of a sum calculated (1) at the rate of one shilling and threepence for every full sum of ten pounds, and the like for every fraction of ten pounds of the nominal amount of such stock inscribed in the name of each and every stockholder at the date of the composition, with the addition (2), when the period within which the stock is to be redeemed or paid off, or during which annual or other payments in respect of the redemption or payment off of the same are required to be made, exceeds sixty years, but does not exceed one hundred years from that date, of threepence for every such ten pounds or fraction of ten pounds; and (3), if the said period exceeds one hundred years, or no period is fixed for such redemption or payment off, or no such annual or other payments are required to be made, with the addition of the said sum of threepence, and a further sum of threepence for every such ten pounds or fraction of ten pounds; and in consideration of such payment transfers of the stock in respect of which such composition has been paid shall be exempt from stamp duty. (2) The provisions for composition contained in this section shall be substituted for any other enactments for a composition for the same duty, but shall not be applicable where any composition has been actually paid previously to the passing of this Act in respect of any stock then created and issued. (3) Where any such stock as in this section mentioned is issued in lieu of mortgages or debentures on the issue of which stamp duty has been paid, it shall be lawful for the Commissioners of Her Majesty's Treasury to reduce the amount of composition payable under this section by the amount of the stamp duty so paid or any part thereof.

(3.) DEBENTURE STOCK.

Regulations as to Debenture Stock.

6. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock. Such debenture stock shall be of a nominal amount, not exceeding the amount of money authorized to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof.

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this

Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interest thereon shall be a charge on the local rate or property specified at the time of the issue thereof, in the same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall, subject to the provisions of this Act, be transferable by writing in manner directed by the local authority.[1]

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer)[1]

shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery.

Any share in stock in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.[2]

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

[1] As to composition for stamp duty on transfers, see note to sec. 5.

[2] With regard to the stamp duty on stock certificates to bearer, see Customs and Inland Revenue Act, 1881 (44 Vict., c. 12), which, by sec. 46, provides as follows:—(1.) Every "stock certificate to bearer" which shall, after the passing of this Act, be issued under the provisions of the Local Authorities Loans Act, 1875, or of any other Act authorizing the creation of debenture stock, county stock, corporation stock, municipal stock, or funded debt, by whatever name known, shall be charged with the stamp duty of seven shillings and sixpence for every full sum of £100, and also for any fraction less than £100, or over and above £100, or a multiple of £100, of the nominal amount of the stock described in the certificate. (2.) Where the holder of any stock certificate to bearer so issued shall have been entered on the register of the local authority as the owner of the share of stock described in the certificate, such certificate shall be forthwith cancelled, so as to be incapable of being re-issued to any person. (3.) The foregoing charge of stamp duty shall not be applicable where a composition has been paid under the provisions of sec. 53 of the Inland Revenue Act, 1880, for the stamp duty on transfers of the stock described in the certificate. (4.) Every person and body of persons, whether corporate or unincorporate, by whom a "stock certificate to bearer" is issued without being duly stamped, shall forfeit the sum of £50.

(4.) ANNUITY CERTIFICATES.

Regulations as to Annuity Certificates.

7. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors, administrators, or assigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery

An annuity certificate in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or, where no sum is prescribed, than three pounds.

(5.) Priority of Loans.

8. All sums for the time being due or authorized to be raised on or in respect of any securities issued in respect of the same loan by a local authority under this Act shall be paid without any preference the one over the other by reason of the priority of date of any of such securities.

Where more than one loan has been raised under this Act by the same local authority, the sums for the time being due or authorized to be raised on or in respect of any securities issued in respect of each loan shall take priority according to the date of such loan.

Where any sum of money is authorized to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorized to be borrowed be not exceeded.

The date of each loan shall, with a view to the priority of the loan and to the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(6.) Notice of Trusts.

Notice of Trust not Receivable.

9. No notice of any trust, expressed, implied, or constructive, shall be received by the local authority, or by any

registrar or officer of the local authority, in relation to any security issued by such authority under this Act.

Owners of Securities not Responsible for Acts of Local Authority.

10. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof.

(7.) REMEDY FOR NON-PAYMENT.

Remedy by Mandamus for Non-payment of Money.

11. The local authority shall pay or raise all sums for the time being due or authorized to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a *mandamus* will be granted to enforce the payment thereof; and an action may be brought accordingly, in which a *mandamus* may be claimed.

Remedy by Appointment of Receiver for Non-payment of Money.

12. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security,

together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorized to be raised is charged on the local rate, the receiver may raise the money he is authorized to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorized to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorized to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale, as in this Act mentioned, by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time ; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

(8.) Discharge of Loan.

Loan Borrowed to be Discharged within Prescribed Period.

13. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period from the date thereof, and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods ; that is to say,

By the issue of annuity certificates limited to expire within the prescribed period ; or,

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the repayment of the whole sum secured by such debentures by equal annual instalments, extending over the whole of the prescribed period, or over a less time than the prescribed period ; or,

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan ; or,

Where a sinking fund is prescribed, but not otherwise, by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

Discharge of Loan by Appropriation of Annual Sum.

14. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at or before the expiration of the prescribed period, pay off the whole of such loan or part of loan, and the interest thereon. The local authority shall in each year pay out of such fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the case of money borrowed on debentures, to the payment off of a corresponding amount of the principal sum secured by such debentures, and in the case of money borrowed by the issue of debenture stock to the redemption of a corresponding amount of such stock.

The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn in presence of the local authority, and any owners of debenture or debenture stock who choose to be present ; the local authority shall cause not less than one month's previous notice of the time and place at which lots are to be drawn to be given by advertisement, published

once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

Discharge of Loan by sinking Fund.

15. Where a sinking fund is prescribed for any loan or part of a loan, the local authority shall create a sinking fund as hereinafter mentioned; that is to say,

(1.) Such equal yearly or half-yearly sum shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate or if no rate is prescribed, at such rate as in the opinion of the local authority, (regard being had to the securities in which they are authorized to make investments), will at the expiration of some period not longer than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan; and,

(2.) The first of such payments shall be made within one year from the date of the loan; and,

(3.) All sums paid into the sinking fund shall be, as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board shall assent, in securities in which trustees are by law for the time being authorized to invest, or in debentures, debenture stock, or annuity certificates issued under this Act, and any such investments may be from time to time varied or transposed, and all dividends and other annual sums received in respect of such investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner; and

(4.) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose:

(5.) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable, shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner hereinbefore in this Act mentioned:

(6.) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan for the discharge of which it was created shall be paid into some other sinking fund under the control of the local authority, or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board, think expedient:

(7.) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act:

(8.) If the annual income of the sinking fund is not less than the annual interest payable on so much of the loan or part of the loan in respect of which it was created as remains undischarged, the equal annual sums required by this section to be paid into the sinking fund may cease to be so paid.

Annual Return as to Sinking Fund.

16. Where a sinking fund is created for the purpose of discharging any loan or part of a loan the local authority

shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form and verified in such manner as the Board from time to time directs, showing the amount which has been invested or applied for the purpose of such sinking fund during the year next preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year. If it appears to the Local Government Board, by such return or otherwise, that the local authority have failed to comply with the provisions of this Act with respect to the sinking fund, that Board may, if they think fit and after hearing the local authority, if desirous to be heard, by order direct that the sum in respect of which default has been made is to be raised and invested or applied as part of the sinking fund, and any such order may be enforced by *mandamus*.

SUPPLEMENTAL PROVISIONS.

(1.) AS TO COUPONS.

Temporary Issue of Coupons.

17. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period.

Endorsement and Crossing of Coupons.

18. A coupon payable to order, which when presented for payment purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon

to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any endorser.

Where a coupon bears across its face an addition in written, printed, or stamped letters of the name of any banker or of the words "and company" in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named or some banker.

Coupons issued in respect of a Security are exempt from Stamp Duty as if attached thereto.

19. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall for the purpose of the Acts relating to stamp duties be deemed to have been attached to and issued with such security.

(2.) AS TO STOCK CERTIFICATES.

Conversion into Nominal Debenture Stock of Stock in Certificate to Bearer.

20. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock shall become nominal debenture stock and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

Trustee not to Apply for Stock Certificate to Bearer.

21. A trustee of debenture stock shall not apply for or hold a stock certificate to bearer unless authorized to do so

by the terms of his trust, and any contravention of this provision by a trustee shall be deemed a breach of trust. But this provision shall not impose on the local authority an obligation to inquire whether a person applying for a stock certificate to bearer is or is not a trustee, or subject the local authority to any liability in the event of their issuing a stock certificate to bearer to a trustee, or invalidate any stock certificate to bearer issued.

(3.) As to Execution and Supply of Securities.

Execution and Supply of Securities.

22. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board may direct on the application of any local authority, whether corporate or unincorporate.

The Commissioners of Inland Revenue may, when required by any local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures, stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct.

(4.) As to Register of Nominal Securities.

Register of Nominal Securities.

23. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

(1.) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered, and

(2.) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorized to be inserted therein.

Inspection of Register.

24. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar, copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

Rectification of Register.

25. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

The court may either refuse the application, with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of Her Majesty's superior courts of law or equity, or any

court to which the jurisdiction of such courts may be transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court, and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

(5.) As to Loans under Official Sanction.

Permissive issue of Securities under Official Sanction.

26. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board to authorize the issue of such securities under official sanction.

The Local Government Board, before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board may require, such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board to ascertain the facts required by this section to be stated in relation to such issue, and the Local Government Board may make such examination or inquiries for ascertaining the said matters and the accuracy of such returns as they may think expedient, and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board may from time to time direct.

The sanction of the Local Government Board given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are as to form and otherwise in conformity with this Act.

The owner of any security issued under official sanction shall on request made by him to the Local Government Board be furnished with a statement of the following particulars; that is to say,—

Where a security is charged on a rate, of the rateable value, at the date of the issue of such security, of the property subject to the rate, and where the security is a charge on property, of the estimated value of such property; also of

The relative priority of the loan, in respect of which such security is issued, and of the other loans (if any) of the borrowing authority;

and such statement shall be evidence of the particulars therein stated.

(6.) AS TO INVESTMENTS ON LOANS UNDER ACT.

Power for Trustees to invest in Loans under Act.

27. Any trustees or other persons for the time being authorized or directed to invest any moneys in the debentures or debenture stock of any railway or other company shall, unless the contrary is provided by the instrument authorizing or directing such investment, have the same power of investing such moneys in any nominal debentures or nominal debenture stock issued under this Act as they have of investing such moneys in debentures or debenture stock of any railway or other company as aforesaid.

Power for Public Works Loan Commissioners to take Securities under Act.

28. When the Public Works Loan Commissioners are authorized to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates or other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan.

(7.) As to General Rules.

Application of Rules in Schedule.

29. The general rules in the Schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act.

Power to make General Rules.

30. The local authority may from time to time, with the consent of the Local Government Board, make, and when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters:

(1.) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act; and,

(2.) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid, add to, rescind, or alter any of the rules in the Schedule hereto.

Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, rescission, or alteration.

(8.) As to Borrowing.

Borrowing and re-borrowing by Local Authorities.

31. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks fit, borrow in manner provided by this Act any loan which it is authorized to borrow.

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act; provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board, and in no case shall be extended beyond the prescribed period.

(9.) As to Forgery and Loss of Securities.

Forgery of Securities.

32. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the Statute Law of England relating to indictable offences by forgery," debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker.

Loss of Securities.

33. If any security issued under this Act is lost, mislaid, or destroyed, the local authority shall, on such indemnity being given as they may require, and on payment of the expense of the issue, issue a fresh security in the place of the security so lost, mislaid, or destroyed.

(10.) Definitions.

34 For the purposes of this Act—

"Prescribed" means prescribed by any Act passed either before or after the passing of this Act authorizing a local authority to borrow money:

"Local authority" means the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority:

"Municipal borough" means any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and any Acts amending the same:

A "rate" means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid, and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly:

"Local rate" means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise:

"Security" means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act:

"Person" includes a body of persons corporate or unincorporate:

"Executors and administrators" includes successors.

(11.) Repeal and Consequential Enactment.

Repeal of 36 & 37 Vict., c. 35.

35. The County Debentures Act, 1873, is hereby repealed, as from the commencement of this Act; but this repeal shall not abridge or prejudicially affect the incorporation of any county authority under that Act, or any right in respect of any debenture issued in pursuance of that Act before the commencement of this Act, or any remedy for non-

payment of moneys secured by any such debenture, and all such rights and remedies may be enforced as if this Act had not been passed.

Incorporation of County Authority for purposes of Act.

36. The justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, issuing any securities under this Act, shall, so far as relates to such securities, be deemed to be incorporated by the name of the justices of the county, liberty, riding, parts, or division of the county to which they belong, or by any other name by which such justices are ordinarily known, or by which they granted the said securities, and may sue and be sued in any action or other legal proceeding relating thereto by such corporate name.

SCHEDULE.

GENERAL RULES.

Transfer of Nominal Securities.

(1.) A number of persons, not exceeding such number as may from time to time be directed by the local authority, may be registered as joint owners of the same nominal security, with right of survivorship between them.

(2.) Unless otherwise directed by a general rule of the local authority, the instrument of transfer of any nominal security issued by a local authority shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain owner of such security until the name of the transferee is entered in the register in respect thereof.

(3.) The transfer books of nominal securities may be closed at such times, not exceeding twice in each year, and not exceeding fourteen days at each time of closing, as the local authority may direct.

Transmission of Nominal Securities.

(4.) The executors or administrators of a deceased owner of a nominal security shall be the only persons recognized by the local authority as having any title to such security.

(5.) Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon such evidence being produced as may from time to time be required by the local authority.

(6.) Unless otherwise directed by a rule of the local authority, any person who has become entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such security.

(7.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such security.

(8.) The instrument of transfer shall be presented to the local authority, accompanied with such evidence as the local authority may require to prove the title of the transferor, and thereupon the local authority shall register the transferee as owner.

(9.) In the construction of this Schedule the term "nominal security" means any nominal debenture, nominal debenture stock, or nominal annuity certificate.

MUNICIPAL CORPORATIONS (BOROUGH FUNDS) ACT.

(35 & 36 VICT., c. 91.)

An Act to authorize the application of Funds of Municipal Corporations and other governing bodies in certain cases.

[10*th August*, 1872.]

WHEREAS by the Act passed in the session holden in the twentieth and twenty-first years of the reign of Her Majesty, intituled An Act to amend the Acts concerning the Municipal Corporations, the trustees acting under any Act of Parliament for supplying any borough, or any district within or in certain cases beyond the limits of a borough, with water or gas, or having powers for providing or maintaining any cemetery or market in or for any borough, or otherwise improving the same, are authorized and empowered to transfer to the body corporate of such borough all their rights, estates, properties, and liabilities:

And whereas by the ninety-second section of the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, to provide for the regulation of Municipal Corporations in England and Wales, in each borough the annual proceeds of all property and hereditaments belonging to the body corporate, and fines and rates levied in the boroughs, are directed to form the borough fund, and such fund is directed to be applied in the payment of certain salaries and certain expenses and the expenses necessarily incurred in carrying into effect the provisions of the said Act, and the surplus (if any) of such fund is directed to be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough:

And whereas the Public Health Act, 1848, the Local Government Act, 1858, and various Local Acts of Parliament, have conferred powers of improving, cleansing, paving, lighting, and otherwise governing places or districts

upon boards of health, commissioners, trustees, or other persons:

And whereas it is expedient to extend the powers of governing bodies so as to enable them to apply the borough or other funds under the control of such governing body towards such costs, charges, and expenses as may be incurred for the purposes and in the manner herein provided:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation of Terms.

1. The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction: Provided, however, that in the borough of Cambridge, in any matters affecting the constitution, power, or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge.

Costs of promoting or opposing Parliamentary and other Proceedings for benefit of Inhabitants to be charge on Borough and Local Funds, except in certain cases.

2. When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal Bill or Bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses

attending the same ; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions : Provided that nothing in this Act contained shall authorize any governing body to promote any Bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament : Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a Bill by a governing body has been decided by a Committee of either House of Parliament to be unreasonable or vexatious.

No Payment to Member of Governing Body to be so charged.

3. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such Bill shall be charged as aforesaid.

Costs of promoting or opposing Bills to require sanction of Special Meetings.

4. No expense in relation to promoting or opposing any Bill or Bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days notice by public advertisement of such meeting, and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such Board, and in respect of other matters, the approval of one of Her Majesty's Secretaries of State, and in case of the promotion of a Bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the Bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not

less than fourteen days after the deposit of the Bill in Parliament: Provided further, that no expense in promoting or opposing any Bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act (1858) for the adoption of that Act.

With regard to the provision as to the consent of the owners and ratepayers being expressed by resolution in the manner provided in the Local Government Act (1858) for the adoption of that Act, it is to be observed that that Act was repealed by the Public Health Act, 1875. Sec. 313 of the Public Health Act, however, provides that where in any Act in force at the time of the passing of that Act, any provisions of any of the Sanitary Acts which are repealed by that Act (the Local Government Act, 1858 being one) are mentioned or referred to, such Act shall be read as if the provisions of the Public Health Act applicable to purposes the same as, or similar to those of the repealed provisions were therein mentioned or referred to, instead of such repealed provisions, and were substituted for the same. As to the "rules as to resolutions of owners and ratepayers," prescribed by the Public Health Act, see Schedule III. to that Act.

Proviso as to approval of Local Government Board, &c., to any such Resolution.

5. The approval of the Local Government Board or one of Her Majesty's Principal Secretaries of State, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or Secretary of State objecting to such approval.

Costs to be Examined.

6. All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by some person to be authorized by one of Her Majesty's Principal Secretaries of State or by the Local Government Board, as the case may be.

Power to direct Local Inquiry.

7. The Local Government Board, or one of Her Majesty's Principal Secretaries of State, shall have power to direct a

local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

Saving Clause.

8. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exerciseable by the inhabitants of any district under any general or special Act.

Towns Improvement Clauses Act, 1847, *s.* 142, *repealed.*

9. The one hundred and forty-second section of "The Towns Improvement Clauses Act, 1847," is hereby repealed so far as the same is inconsistent with the provisions of this Act.

Section 142 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict., c. 34), provided as follows:—"If it appear that any works which the commissioners deem necessary for promoting the health or convenience of the inhabitants of the district within the limits of the Special Act, cannot lawfully be carried into effect by the commissioners, under the powers vested in them by this or the Special Act, by reason either that the moneys authorized to be raised by them are insufficient for the purpose, or that any lands are required which the commissioners are not by this or the Special Act authorized to take or use, or for any other reason, the commissioners may, by special order, as herein defined, but not otherwise, cause application to be made to Parliament for an Act to enable them to execute such works, and may defray the expenses of such application out of the rates authorized to be levied by them under this and the Special Act."

Act not to extend to Bills if object obtainable by Provisional Order.

10. The provisions of this Act shall not extend to applications for any Bill in Parliament for any object which would, for the time being, be attainable by Provisional Order.

Act not to apply to Ireland or the Metropolis.

11. This Act shall not extend or apply to Ireland or the city of London or the metropolitan area as defined by the Metropolitan Local Management Act, 1855.

CONSOLIDATION OF BOROUGH AND COUNTY POLICE.

SUPERANNUATION OF POLICE CONSTABLES, &c.

THE POLICE ACT, 1840.

(3 & 4 Vict., c. 88.)

An Act to amend the Act for the Establishment of County and District Constables.

[*7th August*, 1840.]

Boroughs may agree to Consolidate their Police with County Police.

14. And be it enacted, that it shall be lawful for the justices of any county in which constables shall have been appointed under the said Act,[1] and for the council of any incorporated borough situated in or adjoining to such county, to agree together for the consolidation of the county and borough police establishments; and in every such case all the constables appointed, either for the county or the borough, shall have all the powers, privileges, and duties throughout the county and the borough which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables as well as to the county constables, except as is herein otherwise provided; and every such agreement which shall have been agreed to by the justices of the county in general or quarter session assembled, on the one hand, and by the mayor, aldermen and burgesses of the borough, by their council, on the other hand, shall be binding on both parties, as soon as a memorandum of such agreement under the hands of two or more justices of the county, and counter-

signed by the clerk of the peace, shall be delivered to the council of the borough, and a counterpart thereof under the common seal of the borough shall be delivered to the justices; and when any such agreement shall have been made between any county and any borough, either party shall be empowered to put an end thereunto, without the consent of the other party, after six months' notice in writing shall have been given to the other party; such notice, if given by the county, to be under the hands of two or more justices and countersigned by the clerk of the peace, or if given by the borough, to be under the common seal of the borough: Provided always, that no such notice shall be given by the justices or by the borough unless in either case such notice shall be agreed upon by a majority of three-fourths of the justices attending at any general or quarter session, or three-fourths of the council of the borough.[2]

[1] The Act referred to is 2 & 3 Vict., c. 93.

[2] With regard to arrangement by Her Majesty in Council of terms of consolidation of borough and county police establishments, see sec. 5 of the 19 & 20 Vict., c. 69, *post*. As to determination of agreement for consolidation, see sec. 20 of the 19 & 20 Vict., c. 69, *post*.

Government of Consolidated Police.

15. And be it enacted, that in all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions herein-after contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough without the consent of the chief constable; and so much of the said Act for regulating corporations as empowers the said committee, or any two justices of the peace having jurisdiction within the borough,

to dismiss any constable, shall be suspended, as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force.

THE POLICE ACT, 1856.

(19 & 20 Vict., c. 69.)

An Act to render more effectual the Police in Counties and Boroughs in England and Wales.

[21*st July*, 1856.]

WHEREAS an Act was passed in the session holden in the second and third years of Her Majesty, chapter ninety-three, "for the Establishment of County and District Constables by the Authority of the Justices of the Peace," which Act was amended by an Act passed in the session holden in the third and fourth years of Her Majesty, chapter eighty-eight: And whereas a police force has been established under the authority of the said Acts in several counties and part of counties in England and Wales: And whereas by the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, "to provide for the Regulation of Municipal Corporations in England and Wales," provision is made for the appointment of constables in all boroughs in England and Wales which are subject to that Act: And whereas, under the said secondly-mentioned Act, power is given to justices of counties and councils of boroughs to agree for the consolidation of the county and borough police establishments: And whereas, for the more effectual prevention and detection of crime, suppression of vagrancy, and maintenance of good order, it is expedient that further provision should be made for securing an efficient police force throughout England and Wales: Be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Her Majesty in Council, on Representations from Boroughs, may arrange terms of Consolidation with Counties. Power to Her Majesty to vary such terms from time to time.

5. In case it be represented to one of Her Majesty's principal Secretaries of State by the council of any borough, that application has been made by such council to the justices of any county in or adjoining to which such borough is situate, to consolidate the police of such county and borough in the manner provided by the fourteenth section of the said Act of the third and fourth years of Her Majesty, and that such consolidation has not been effected, it shall be lawful for such principal Secretary of State to inquire into the terms of consolidation proposed, and to report thereon to Her Majesty in Council; and it shall be lawful for Her Majesty, with the advice of her Privy Council, to fix the terms and conditions and date upon and from which such consolidation shall take effect, and thereupon the provisions of such last-mentioned Act shall become applicable as if such consolidation had been effected by an agreement made under the said section, save so far as such provisions relate to the determination of such agreement; and it shall be lawful for Her Majesty, with the advice of her Privy Council, at any time, and from time to time, to vary the terms of any such consolidation, or at any time to determine such consolidation upon such terms as to Her Majesty in Council may seem just.

County Constables to have the like powers, &c., in Boroughs as Borough Constables have in the County.

6. The constables of every county appointed under the said Acts of the second and third, and third and fourth years of Her Majesty, or either of them, or this Act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as

constables for conducting themselves in the execution of their office.

See also sec. 2 of the 22 & 23 Vict., c. 32, *post.*

Constables to perform duties connected with the Police as directed by Justices or Watch Committees.

7. The constables acting under the said Acts of the second and third, and third and fourth years of Her Majesty, the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct and require.

See also sec. 2 of the 22 & 23 Vict., c. 32, *post.*

Constable not to receive to his own use Fees for Performance of his Duties.

8. It shall not be lawful for any constable acting under the three said Acts of the second and third, and third and fourth years of Her Majesty, and the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts (other than a local constable appointed under the said Act of the third and fourth years of Her Majesty), to receive to his own use any fee for the performance of any act done by him in the execution of his duty as such constable; but this enactment shall not extend to prevent the receipt by any such constable of any fee or other payment legally payable which he may be liable to account for and pay over to the treasurer of the county or borough, or otherwise for the use of the county or borough, or which may be payable to, or applied in aid of, any police superannuation fund established or to be established in any borough, under the provisions of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter fourteen, or of any local or other Act of Parliament.

Borough Constables disqualified from Voting at certain Elections.

9. No head or other constable already appointed or hereafter to be appointed for any borough, under the said Act

of the fifth and sixth years of King William the Fourth, except special constables, shall, during the time he continues to be such constable, or within six calendar months after he has ceased to be such constable, be capable of giving his vote for the election of any person to any municipal office in such borough, or for the election of a member to serve in Parliament for such borough or any county in or to which such borough is situate, either wholly or in part, or adjoins, or for any borough within any such county, nor shall any such constable, by word, message, writing, or in any other manner, endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough, or to be a member to serve in Parliament for any such borough or county; and if any such constable shall offend therein he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence, and one-half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the borough: Provided always that nothing herein-contained shall subject any constable to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

Annual Statement as to Crime in counties and boroughs to be furnished to Secretary of State.

14. The justices of every county and the watch committee of every borough shall, in the month of October in every year, transmit to one of Her Majesty's principal Secretaries of State a statement, in such form as one of the said Secretaries of State may from time to time direct, for the year ending the twenty-ninth day of September then last, of the number of offences reported to the police within such county or borough respectively, the number of persons apprehended by the police, the nature of the charges against them, the result of the proceedings taken thereupon, and any other particulars relating to the state of crime within such county or borough which such justices or watch committee may think it material to furnish, and a classified abstract of all such reports and returns shall be annually prepared and laid before Parliament.

Power to Her Majesty to appoint Inspectors for inquiring into state and efficiency of the Police in Counties and Boroughs, &c.

15. It shall be lawful for Her Majesty, by warrant under her royal sign manual, to appoint, during Her Majesty's pleasure, three persons as inspectors under this Act, to visit and enquire into the state and efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-ups, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to one of Her Majesty's principal Secretaries of State, who shall cause such reports to be laid before Parliament; and such inspectors shall be paid, out of such money as may be provided by Parliament for the purpose, such salaries and allowances as shall be determined by the Commissioners of Her Majesty's Treasury.

On Certificate of Secretary of State that an efficient Police has been established in any county or borough, one-fourth of the charge for pay and clothing to be paid by Treasury.

16. Upon the certificate of one of Her Majesty's principal Secretaries of State, that the police of any county or borough established under the provisions of the said Acts, and this Act, or any of them, has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth of September then last past, it shall be lawful for the Commissioners of Her Majesty's Treasury to pay from time to time, out of the moneys provided by Parliament for the purpose, such sum towards the expenses of such police, for the year mentioned in such certificate, as shall not exceed one-fourth of the charge for their pay and clothing, but such payment shall not extend to any additional constables appointed under the nineteenth section of the said Act of the third and fourth years of Her Majesty: Provided that before any such certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector relating to the police of such county or borough shall be sent to the

justices of such county, or to the watch committee of such borough, who may address any statement relating thereto to the Secretary of State; and in every case in which such certificate is withheld, a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the justices or watch committee as aforesaid, shall be laid before Parliament.

Section 2 of the 38 & 39 Vict., c. 48. provides that so much of any Act as limits the amount authorized to be contributed by the commissioners of Her Majesty's Treasury, out of moneys provided by Parliament towards the expenses of any police force in Great Britain, to a particular amount, or a particular proportion of any annual sum or charge, specified in such Act, shall, during the continuance of that Act, be repealed. The Act is continued in force by the Expiring Laws Continuance Act, 1882, (45 & 46 Vict., c. 64), until the 31st of December, 1883.

Borough where Population does not exceed 5,000 *and not consolidated with Police of a County.*

17. No such sum as aforesaid shall be paid towards the pay and clothing of the police of any borough, not being consolidated with the police of a county under the said Act of the third and fourth years of Her Majesty, or this Act, the population of which borough, according to the last Parliamentary enumeration for the time being, does not exceed five thousand.

Provisions relating to Borough Police to be applicable to the police in the places referred to in section 20 *of* 3 & 4 *Vict., c.* 88, *until discontinued.*

18. Until the constables or watchmen appointed in and for any parish, town, or place under the Act passed in the session holden in the third and fourth years of King William the Fourth, chapter ninety, or under any local Act authorizing the appointment of constables or watchmen, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen, are discontinued as a separate force in manner provided by section twenty of the said Act of the third and fourth years of Her Majesty, and by this Act, all the provisions of this Act applicable to the constables of any borough acting under the said Act of the fifth and sixth years of King William the Fourth shall be applicable to the constables or watchmen appointed under the said Act of the third and fourth years of King William

the Fourth, or under such local Act as aforesaid, in and for such parish, town, or place, and until such discontinuance all the provisions of this Act applicable to the watch committee of a borough shall be applicable to the inspectors, commissioners, or other persons having the appointment of constables or watchmen in and for such parish, town, or place, and the police of such parish, town, or place shall be visited and inquired into by the inspectors under this Act; and the provision in this Act enabling the Commissioners of Her Majesty's Treasury to make payment towards the expenses of the police of a borough having a population exceeding five thousand, shall, until such discontinuance, extend to the police of such parish, town, or place as aforesaid having the like population.

The separate Police in such places (having a population of 15,000) *not to be superseded without the authority of the Secretary of State.*

Provided, that where any such parish, town, or place, having such constables or watchmen as aforesaid, contains, according to the last Parliamentary enumeration, a population of fifteen thousand persons or upwards, the chief constable of the county in which such parish, town, or place is situate shall not give notice under the said section twenty of the said Act of the third and fourth years of Her Majesty, that he is ready to undertake the charge of such parish, town, or place, without the previous authority of one of Her Majesty's principal Secretaries of State; and notice of the intention of the chief constable to apply to the Secretary of State for such authority shall be published by such chief constable in such parish, town, or place, in manner directed by the said section twenty, respecting the publication of the notice therein-mentioned, fourteen days at least before such application is made.

No Agreement under section 14 *of* 3 & 4 *Vict., c.* 88, *to be put an end to without the sanction of Secretary of State.*

20. No agreement made under section fourteen of the said Act of the third and fourth years of her Majesty, shall be put an end to without the sanction of one Her Majesty's principal Secretaries of State.

Provisions of 8 & 9 *Vict., c.* 18, *for purpose of purchases of station houses, &c., by Justices, incorporated with this Act.*

23. For facilitating the purchase of lands and tenements for the purposes mentioned in section twelve of the said Act of the third and fourth years of Her Majesty, the provisions of "The Lands Clauses Consolidation Act, 1845," except the provisions with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with the said Act of the third and fourth years of Her Majesty and this Act; and the expression "the promoters of the undertaking," in the said Lands Clauses Consolidation Act, shall, for the purposes of such incorporation mean the justices of the peace of any county in general or quarter sessions assembled; and the powers of providing station houses and strong rooms contained in sections twelve and thirteen of the said Act of the third and fourth years of Her Majesty, and this Act, shall extend to authorize the providing of such station-houses and strong rooms within any borough lying within or adjoining to the county for which the same may be provided.

Provisions of 7 *Geo.* 4, *c.* 18, *as to disposal of unnecessary station houses, &c., extended to this Act.*

24. The Act of the seventh year of the reign of King George the Fourth, chapter eighteen, "to authorize the Disposal of unnecessary Prisons in England," shall extend to and include all station houses, lock-up houses, strong rooms, and the sites thereof, and all other lands and tenements whatsoever which may at any time be vested in the justices of the peace of any county, or in any persons in trust for them, for the purposes of the police, and which, in the judgment of such justices, shall for any reason whatever have become unnecessary.

Interpretation of Certain Terms.

30. The word "county" shall in this Act have the same meaning as is assigned to such word in the said Act of the third and fourth years of Her Majesty, except as to the soke or liberty of Peterborough, in the county of North-

ampton, which, for all purposes of this and the several recited Acts, shall be deemed and taken to be a county of itself; and the several provisions in this Act and the said recited Acts shall apply and operate in, for, and concerning the said soke or liberty accordingly; and the word "borough" shall mean any city, borough, or place incorporated under the provisions of the said Act of the fifth and sixth years of King William the Fourth, or which has otherwise become subject to the provisions of the same Act; and every part of the Cinque Ports, two ancient towns of Winchelsea and Rye, and their several members and liberties, which is not within the municipal boundaries of a place named in one of the Schedules (A.) and (B.) to the last-mentioned Act, shall, for the purposes of the said Acts of Her Majesty, and this Act, be deemed to form part of the county in which the same is situate, and shall be dealt with, under the said Acts of Her Majesty, and this Act, as a liberty which, under the said Acts of Her Majesty, forms part of a county, notwithstanding it may be a member or liberty of a place named in one of the said Schedules.

2 & 3 Vict., c. 99, and 3 & 4 Vict., c. 88, and this Act to be as one.

31. The said Acts of the second and third, and of the third and fourth years of Her Majesty, and this Act, shall be construed together as one Act.

THE POLICE ACT, 1859.

(22 & 23 Vict., c. 32).

An Act to amend the Law concerning the Police in Counties and Boroughs in England and Wales.

[13*th August*, 1859.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

County Constables not to be required to act in any Borough.

2. No county constable shall, as such constable, be required to act in any borough having a separate police establishment, except in execution of warrants of justices of such county, or by the order of his chief constable or superintendent; and in all cases of special emergency the chief constable or superintendent, when required so to do by the watch committee of any borough having a separate police establishment, shall have power to direct the county constables to act within such borough; and no constable of any borough having a separate police establishment shall as such constable be required to act out of his borough, except in execution of warrants of justices of such borough, or in pursuance of directions from the watch committee in case of special emergency.

County Constables not to Vote in certain Municipal Elections.

3. No chief or other constable already appointed or hereafter to be appointed for any county, under the Act of the session holden in the second and third years of Her Majesty, chapter ninety-three, or the said Act of the third and fourth years of Her Majesty, or the said Act of the nineteenth and twentieth years of Her Majesty, shall, during the time he continues to be such constable, be capable of giving his vote for the election of any person to any municipal office in any borough within such county, or in any other borough in which such constable has authority, nor shall any such constable, by word, message, writing, or in other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to hold any municipal office in such borough; and if any such constable shall offend therein he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence, and one-half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the county, to be by him applied for the purposes of the police of the county.

As to disqualification for voting of borough constables, see sec. 9, of the 19 & 20 Vict., c. 69, *ante*.

Section 13 of 2 & 3 Vict., c. 93, Amended.

4. So much of section thirteen of the said Act of the second and third years of Her Majesty, chapter ninety-three, as provides that every constable who shall resign or withdraw himself without such leave or notice as therein mentioned shall be liable, on being convicted thereof before any two justices of the peace for the county, to forfeit all arrears of pay then due to him, or to a penalty not more than five pounds, shall be repealed; and in case any constable under the said Acts of the second and third years, third and fourth years, and nineteenth and twentieth years of Her Majesty, or any of them, shall resign or withdraw himself from his duty without such leave or notice as is required by the said section, such resignation or withdrawal shall be notified in writing, by the chief constable or by the superintendent under whom the offending constable may have been placed, to the treasurer of the county or the paymaster of the constabulary force, and all arrears of pay then due to such constable so resigning or withdrawing shall, without further proceeding in respect of his offence, be forfeited; and upon summary conviction of such offence before any two justices of the peace for the county, such constable shall be liable to a penalty not exceeding five pounds.

11 & 12 Vict., c. 14, Repealed.

7. The Act passed in the session holden in the eleventh and twelfth years of Her Majesty, chapter fourteen, "for authorizing a borough police superannuation fund," shall be repealed; but any superannuation fund created or applied under that Act shall be transferred to and form part of the superannuation fund to be created or applied under this Act.

Superannuation Fund to be provided for Constables.

8. There shall be deducted from the pay of every constable belonging to the police force established in any borough under the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, a sum after such yearly rate as the council of the borough may direct, not exceeding the rate of two

pounds ten shillings in a hundred pounds for a year, which sum so deducted, and also the moneys accruing from stoppages from any of the said constables during sickness, and fines imposed on any of the said constables for misconduct, and from any portion of the fines imposed by any justice of the peace upon drunken persons, or for assaults upon police constables, and from moieties of fines and penalties awarded to informers (being police constables) on summary convictions as shall be directed by such justice to be paid for the benefit of this fund, and all moneys arising from the sale of worn or cast clothing supplied for the use of the said constables, shall from time to time be invested in such manner as the council may direct, and the interest and dividends thereof, or so much of the same as shall not be required for the purposes herein-after mentioned, shall be likewise invested in like manner, and accumulate so as to form a superannuation fund, and shall be applied from time to time for payment of such superannuation or retiring allowances or gratuities as may be ordered by the watch committee, as herein-after provided ; and the council shall guarantee the security of the superannuation fund of their borough, and make good out of the borough fund or the borough rates any deficiency which may arise in such superannuation fund from the default of any treasurer or other person intrusted with the custody or management thereof.

Rates of allowance from the said Fund.

9. It shall be lawful for the watch committee of any borough, with the approbation of the council, to order that any of the said constables who may be worn out or otherwise disabled from infirmity of mind or body be superannuated, and receive thereupon, out of the superannuation fund, a yearly allowance, subject to the following conditions, and not exceeding the following proportions ; (that is to say,) if the constable has served with diligence and fidelity for fifteen years and less than twenty years, an annual sum not more than half his pay ; if for twenty years or upwards, an annual sum not more than two-thirds of his pay : Provided that if he be under sixty years of age it shall not be lawful to grant any such allowance unless upon the certificate of the chief or head constable that the constable to be superannuated is incapable from infirmity of mind or

body to discharge the duties of his office: Provided also, that if any constable be disabled, from any wound or injury received in the actual execution of the duty of his office, it shall be lawful to grant him any allowance not more than the whole of his pay; but nothing herein contained shall be construed to entitle any constable absolutely to any superannuation allowance, or to prevent his being dismissed without superannuation allowance.

See also 28 & 29 Vict., c. 35, *post.*

Power to grant Gratuities to incapacitated Constables who have not served fifteen years.

10. It shall be lawful for the watch committee of any borough, if they think fit, with the approbation of the council, and upon the recommendation of the chief or head constable, and upon his certifying that any constable belonging to the police force of the borough who has not served so long as fifteen years, is incapable from infirmity of mind or body to discharge the duties of his office, to order that such constable shall receive out of the superannuation fund such sum in gross as a gratuity upon his retirement as to the said watch committee may seem proper.

See also 28 & 29 Vict., c. 35, *post.*

Fees received by Constables of a borough to be paid to the Superannuation Fund.

11. Any fee payable to any constable appointed for any borough, for the performance of any act done in the execution of his duty as such constable, shall be received in such manner as the watch committee, subject to the approbation of the council, may direct, and shall be paid over to the superannuation fund.

Provision for insufficiency of Superannuation Fund.

12. If at any time the superannuation fund to be created under this Act for any borough be found insufficient to pay the allowances granted upon it, the amount in which the fund shall from time to time be found insufficient shall

be made good from the borough fund, or where such fund be inadequate then from the borough rates.

Superannuation Fund to vest in Borough Treasurer.

13. The superannuation fund created under this Act in any borough shall vest in the treasurer of the borough, and such treasurer shall keep a separate account of all sums of money by him received and paid in respect of such superannuation fund or for superannuations, and of the several matters for which such sums have been received and paid, and all provisions concerning the keeping, auditing, and publishing, and otherwise in relation to the accounts kept by such treasurer, under the said Act of the fifth and sixth years of King William the Fourth, shall be applied to the accounts kept under this enactment.

Provision for Payment of Allowances heretofore granted. Rights, &c., under the repealed Act reserved.

15. Allowances heretofore granted to constables, or which might have been granted to constables appointed previously to the passing of this Act, under the said Act of the eleventh and twelfth years of Her Majesty, shall be paid from the superannuation fund to be applicable under this Act; and all constables now appointed in any borough in which the provisions of the said last-mentioned Act are now in force, shall be entitled to receive from the superannuation fund all such allowances, payable at such times, and with and under the same rights and conditions, as they would have been entitled to if this Act had not passed.

How past services of existing Constables to be reckoned for Superannuation Allowance.

16. The periods of service during which constables have been subjected to deductions from their pay towards a superannuation fund under the said Act of the eleventh and twelfth years of Her Majesty shall, in determining what superannuation allowances may be granted to them, be reckoned and allowed to such constables, and in the case of constables permanently appointed in any borough

for which no superannuation fund has been provided, and from whose pay no such deduction has been paid, one-half only of the respective periods of service of such constables before the passing of this Act shall be reckoned or allowed to such constables in determining what superannuation allowances may be granted under this Act.

Provision for the case of Consolidation of County and Borough Police.

17. On the consolidation of the police of any borough with the police of any county, under the provisions of the Act of the session holden in the third and fourth years of Her Majesty, chapter eighty-eight, the superannuation allowance previously granted to any borough constable shall be charged on the borough fund or the borough rates of the borough, and the superannuation allowance to be thereafter granted to any borough constable transferred under such consolidation shall be charged upon the superannuation fund of the county; and in determining the amount of any such allowance the period of service of any such constable in the borough shall be reckoned as if the same had been in the county police; and this charge, and the disposal of the borough superannuation fund, shall form a part of the agreement to be entered into on the consolidation.

On promotion of Constables from one force to another, half of past service may be reckoned as service in the latter Force.

19. In order to provide the most meritorious and fit men to fill the superior ranks in the police, any constable or officer promoted from one force to another, either of a county or a borough, who shall have served in his last force for a period of seven years, shall, for the purposes of superannuation, reckon as service in the force to which he is promoted one-half of the period of his previous service, provided that the promotion be made, in the case of a county constable, on the recommendation of the chief constable, with the sanction of the court of quarter sessions, and in the case of a borough constable, on the recommendation of the head constable of the borough, with the sanction of the

council, and that in both cases the service be formally certified at the time of promotion.

General or Quarter Sessions of Counties, &c., may grant Gratuities to Widows of Constables dying in service.

20. The court of general or quarter sessions for any county, and the watch committee, subject to the approbation of the council for any borough, may, upon the recommendation of the chief or head constable, grant a gratuity out of the superannuation fund of their county or borough to the widow of any constable who has died in the service, provided the sum so granted do not exceed the amount of one year's pay of such constable, and that he have contributed to the superannuation fund for a period of not less than three years.

Act not to apply, as to Superannuation Fund, to places where such a Fund has been already established.

21. None of the provisions of this Act relating to a police superannuation fund, or contributions thereto or payments thereout, shall apply to any county, city, or borough in which a police superannuation fund has, at the time of the passing of this Act, been established under the provisions of any local Act now in force.

Gratuities may be granted as Reward for Good Service to Police out of Police Rates, &c.

24. The court of general or quarter sessions for any county, and the watch committee, subject to the approbation of the council for any borough, may, upon the recommendation of the chief constable of any county police force, or of the superintendent of the police for the said borough, grant to any constable in the said county or borough, out of the police rate or borough fund, a gratuity in money not exceeding three pounds, in respect of and as a reward for any meritorious act done by the said constable in the execution of his duty.

Chief Constable empowered to suspend Constables.

26. The chief constable of any county police force, and the watch committee of any city, borough, district, or place,

is and are hereby empowered to suspend any constable, within their respective jurisdiction, whom he or they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same; and the said chief constable or watch committee is and are hereby also empowered, at his or their discretion, to fine any such constable in a sum of money not exceeding one week's pay, and to reduce the said constable from a superior to an inferior rank, such fine and reduction in rank to be in addition to any other punishment to which the said constable may be liable.

Inspectors under 19 & 20 *Vict., c.* 69, *still entitled to Half-pay.*

27. The office or employment of inspector under the Act of the nineteenth and twentieth years of Her Majesty, chapter sixty-nine, shall not prevent the holder thereof from receiving any half-pay to which, if he did not hold such office or employment, he might be or become entitled.

POLICE SUPERANNUATION ACT, 1865.

(28 & 29 Vict., c. 35.)

An Act to amend the Law relating to the Police Superannuation Funds in Counties and Boroughs.

[*2nd June*, 1865,]

WHEREAS it is expedient to amend the law relating to police superannuation funds in counties and boroughs: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short Title.

1. This Act may be cited for all purposes as "The Police Superannuation Act, 1865."

Short Titles of certain Police Acts.

2. Throughout this Act the Acts herein-after mentioned shall be distinguished by the following short titles ; that is to say,—

The Act of the session of the third and fourth years of the reign of Her present Majesty, chapter eighty-eight, intituled *An Act to amend the Act for the Establishment of County and District Constables*, by the short title of "The Police Act, 1840:"

The Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter sixty-nine, intituled *An Act to render more effectual the Police in Counties and Boroughs in England and Wales*, by the short title of "The Police Act, 1856:"

The Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter thirty-two, intituled *An Act to amend the Law concerning the Police in Counties and Boroughs in England and Wales*, by the short title of "The Police Act, 1859."

Amendment of Section 11 *of* 3 & 4 *Vict., c.* 88 ; *Section* 10 *of* 19 & 20 *Vict., c.* 69 ; *and Sections* 9 & 10 *of* 22 & 23 *Vict., c.* 32.

3. Whereas by "The Police Act, 1840," and "The Police Act, 1856," the justices of the county in general or quarter sessions assembled, and by "The Police Act, 1859," the watch committee of a borough, with the approbation of the council, are authorized, subject to the conditions and in the events in the said Acts respectively mentioned, to grant out of the police superannuation funds to constables of the police forces of counties and boroughs, who have served fifteen years, superannuation or retiring allowances ; and to constables who may not have served fifteen years, sums in gross as gratuities: And whereas it is expedient that in some cases annual allowances for a limited time should be granted in lieu of allowances for life or gratuities: Be it enacted, that where the said Acts authorize a grant to be made to a constable of a superannuation or retiring allowance or a gratuity, the authority having power to grant such allowance or gratuity may, in lieu thereof, grant an annual allowance for a limited time, to be fixed by such authority, and

to be determined on the death of the annuitant before the expiration of the time fixed: Provided that where an allowance for a limited time is granted to a constable who has served for fifteen years or more, it shall be granted on the same scale as if it were a permanent superannuation or retiring allowance, and if at the expiration of the limited time the annuitant is incapable from infirmity of mind or body of discharging the duties of a constable, or has attained the age of sixty years, the allowance granted to him for a limited time only shall be continued during the remainder of his life: Provided also, that where a person to whom an annual allowance for a limited time has been granted under this section is re-appointed to the office of constable, the time during which he was in receipt of such allowance shall, for the purpose of any subsequent superannuation allowance, be reckoned as service in the force.

Head Constable included in provisions of 22 & 23 *Vict., c.* 32.

4. Whereas doubts are entertained whether the provisions of "The Police Act, 1859," relating to a superannuation fund for constables belonging to a police force in boroughs, apply to a chief or head constable of the police force in such boroughs, by reason, amongst other things, that the said Act requires in certain cases the certificate or recommendation of the chief or head constable before an allowance can be made or a gratuity given out of the said fund to a constable or his widow: And whereas it is expedient to remove the said doubts: Be it enacted, that the chief or head constable of the police force established in any borough in which the superannuation fund is subject to the regulations of the Police Act, 1859, shall, from and after the date of the passing of this Act, be deemed to be a constable of the said police force for all purposes relating to and within the meaning of this Act and all other Acts regulating such superannuation fund; provided, first, that in the case of the said chief or head constable, or his widow, a resolution of the watch committee to the effect of the certificate, or recommendation required to be given by the chief or head constable under "The Police Act, 1859," shall be deemed to be equivalent to such certificate or recommendation; secondly, that the period of service during which any chief or head constable,

either as such or as an inferior member of the force, may have been subjected to deductions from his pay towards such borough police superannuation fund as aforesaid shall, in determining what allowance or gratuity is to be made to him, be reckoned and allowed to such chief or head constable; thirdly, that one-half only of the period of service (if any) during which such chief or head constable, either as such or as an inferior member of the force, has been subjected to no such deduction as aforesaid from his pay towards such superannuation fund as aforesaid, shall be reckoned and allowed to such chief or head constable in determining what allowance or gratuity is to be made to him; fourthly, that where such chief or head constable has been promoted from another police force, whether county or borough, to the borough force out of the fund of which he claims superannuation, in such a case, if he has served not less than seven years either as chief, head, or other constable in such other force, his service in such other force to the extent of one-half thereof shall be deemed, for the purposes of superannuation, to be service in the latter force, and be reckoned accordingly, subject to the conditions on which service in the latter force may be reckoned under this section; and subject also to the qualification that if at the time when he was promoted from the other force he was under the rank of chief or head constable, no part of his service in such other force shall be reckoned, unless his promotion took place on the recommendation of the chief or head constable of the force from which he was promoted.

Nothing to prevent Dismissals without Retiring Allowances.

5. Nothing in this Act contained shall be construed to entitle absolutely any chief or head constable or other constable, or his widow, to any superannuation or retiring allowance or gratuity, or to prevent any such constable being dismissed without such allowance or gratuity: Provided also, that nothing in this Act contained shall diminish or prejudice the allowances or rights of any chief or head constable or other constable given or reserved by the fifteenth section of "The Police Act, 1859."

LIST OF MUNICIPAL BOROUGHS.

Aberavon
Aberystwith
Abingdon
Accrington
Andover
Arundel
Ashton-under-Lyne
Bacup
Banbury
Barnsley
Barnstaple
Barrow-in-Furness
Basingstoke
Bath
Batley
Beaumaris
Beccles
Bedford
Berwick-upon-Tweed
Beverley
Bewdley
Bideford
Birkenhead
Birmingham
Blackburn
Blackpool
Blandford Forum
Bodmin
Bolton
Bootle-cum-Linacre
Boston
Bradford (Yorks.)
Brecon
Bridgnorth
Bridgwater
Bridport
Brighton
Bristol
Buckingham
Burnley
Burslem
Burton-upon-Trent
Bury (Lanc.)
Bury St. Edmunds
Calne
Cambridge
Canterbury
Cardiff
Cardigan
Carlisle
Carmarthen
Carnarvon
Chard
Cheltenham
Chester
Chesterfield
Chichester
Chippenham
Chipping Norton
Chipping Wycombe
Chorley (Lanc.)
Clitheroe
Colchester
Congleton
Conway
Coventry
Crewe
Darlington
Dartmouth
Daventry
Deal
Denbigh
Derby
Devizes
Devonport
Dewsbury

Doncaster
Dorchester
Dover
Droitwich
Dudley
Dunstable
Durham
East Retford
Evesham
Exeter
Eye
Falmouth
Faversham
Flint
Folkestone
Gateshead
Glastonbury
Glossop
Gloucester
Godalming
Godmanchester
Grantham
Gravesend
Great Yarmouth
Grimsby
Guildford
Halifax
Hanley
Hartlepool
Harwich
Hastings
Haverfordwest
Hedon
Helston
Hereford
Hertford
Heywood
Honiton
Huddersfield
Huntingdon
Hyde
Hythe
Ipswich
Jarrow-on-Tyne
Keighley
Kendal
Kidderminster
King's Lynn
Kingston-upon-Hull
Kingston-on-Thames
Lancaster
Launceston
Leamington (Royal Leamington Spa)
Leeds
Leicester
Leominster
Lewes
Lichfield
Lincoln
Liskeard
Liverpool
Llandovery
Llanidloes
Longton
Louth
Ludlow
Luton
Lyme Regis
Lymington
Macclesfield
Maidenhead
Maidstone
Maldon
Manchester
Margate
Marlborough
Middlesbrough
Monmouth
Morpeth
Neath
Newark
Newbury
Newcastle-on-Tyne
Newcastle-under-Lyme
Newport (Monmouth)
Newport (I. of W.)
Northampton
Norwich
Nottingham
Oldham
Oswestry
Over Darwen
Oxford

Pembroke
Penryn
Penzance
Peterborough
Plymouth
Pontefract
Poole
Portsmouth
Preston
Pwllheli
Reading
Reigate
Richmond (Yorks.)
Ripon
Rochdale
Rochester
Romsey
Rotherham
Ruthin
Ryde
Rye
Saffron Walden
St. Albans
St. Helens
St. Ives (Cornw.)
St. Ives (Hunts.)
Salford
Salisbury
Sandwich
Scarborough
Shaftesbury
Sheffield
Shrewsbury
Southampton
South Molton
Southport
South Shields
Southwold
Stafford
Stalybridge
Stamford
Stockport
Stockton-on-Tees
Stoke-upon-Trent
Stratford-upon-Avon
Sudbury
Sunderland
Swansea
Tamworth
Taunton
Tenby
Tenterden
Tewkesbury
Thetford
Tiverton
Torrington
Totnes
Truro
Tynemouth
Wakefield
Wallingford
Walsall
Warrington
Warwick
Wells
Welshpool
Wenlock
West Bromwich
Weymouth and Melcombe Regis
Wigan
Winchester
Windsor, New
Wisbech
Wolverhampton
Worcester
Wrexham
Yeovil
York

Boroughs included in the above list, which are Municipal Boroughs only.

Accrington
Arundel
Bacup
Barnsley
Barrow-in-Furness
Basingstoke
Beccles
Beverley

Bideford
Blackpool
Blandford Forum
Bootle-cum-Linacre
Bridgwater
Burton-upon-Trent
Chard
Chesterfield
Chipping Norton
Chorley (Lanc.)
Congleton
Crewe
Dartmouth
Daventry
Doncaster
Dunstable
Faversham
Glastonbury
Glossop
Godalming
Great Yarmouth
Hedon
Heywood
Honiton
Hyde
Jarrow-on-Tyne
Keighley
Kingston-on-Thames
Lancaster
Leamington
Llandovery
Louth
Luton
Lyme Regis
Maidenhead
Margate
Newbury
Oswestry
Over Darwen
Penzance
Reigate
Romsey
Rotherham
Ryde
Saffron Walden
St. Albans
St. Helens
St. Ives (Hunts.)
South Molton
Southport
Southwold
Stratford-upon-Avon
Sudbury
Tenterden
Thetford
Torrington
Totnes
Wells
Wisbech
Yeovil

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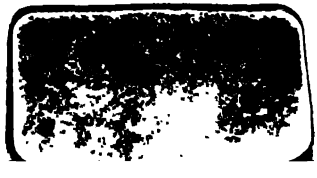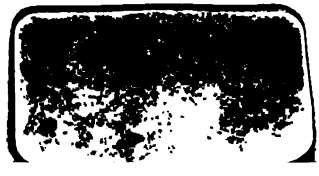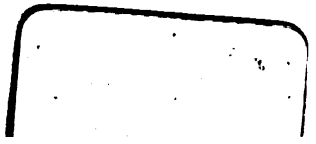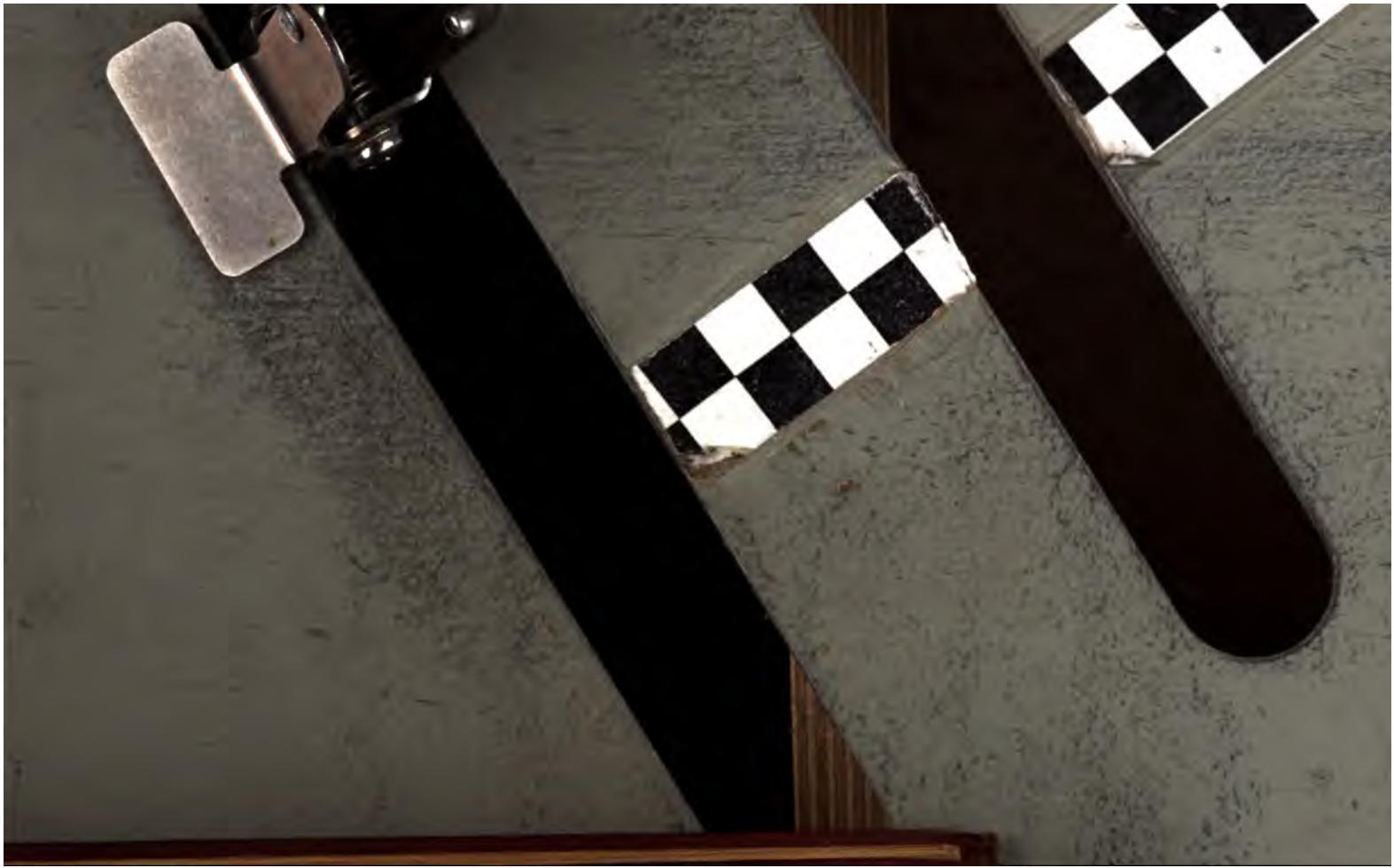
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